

**FEASIBILITY STUDY REGARDING
THE CREATION OF A
MUNICIPAL SCHOOL DISTRICT IN THE
CITY OF LAKELAND, TENNESSEE**

©COPYRIGHT, 2012

BY

**SOUTHERN EDUCATIONAL STRATEGIES, LLC
262 GERMAN OAK DRIVE, SUITE A
MEMPHIS, TENNESSEE 38018**



SOLUTIONS FOR SUCCESS!

WWW.SESCONSULTANTS.ORG

JANUARY 16, 2012

Table of Contents

Executive Summary	1
Introduction to the Study	3
Feasibility Study Methodology.....	5
A Brief Review of the Literature and Research Related to Enrollment Size in School Districts.....	10
Overview of Tennessee Educational Finance System	16
Basic Education Program (BEP).....	16
Shelby County Property Tax.....	18
Local Option Sales Tax.....	21
Required Municipality Financial Revenue Support and “Maintenance of Effort” Requirement	22
Legal and Regulatory Issues Regarding Municipal School Districts.....	23
History of Past Practice Regarding School Facility Transfer in Shelby County	69
Watkins Uiberall, PLLC Report	71
Municipal Public School Systems Currently Operating in Tennessee	76
Demographics and Governmental Characteristics of Lakeland, Tennessee.....	82
Projected Lakeland School District Average Daily Membership (ADM) Student Enrollment.....	83
Overview of Essential Academic Program and Operational Requirements	84
Central Office Organizational Structure.....	84
Employment of a Superintendent of Schools	86
Certificated Personnel Staffing	87
Classified Personnel Staffing.....	88
Support Services.....	89
School Nutrition	89
School Transportation.....	90
Instructional Technology.....	91
Maintenance and Operations	92
Custodial Services	92
Fiscal Requirements	93
Projected Revenues	93
Projected Expenditures.....	98

Summary and Considerations	117
Frequently Asked Questions Regarding the Potential Creation of New Municipal School Districts in Shelby County, Tennessee	122
Appendix A: Lakeland School Map	126
Appendix B: Shelby County Schools Five-Year Capital Improvement Plan.....	128
Appendix C: FY2011 Sales Tax Collections	130
Appendix D: Lakeland Sales Tax Collections for FY2011.....	132
Appendix E: Duties of a Tennessee Superintendent of Schools	134
Appendix F: Lakeland BEP Allocations and Summary of BEP Funding Research	140
Appendix G: Estimated New School Construction Costs	146
Appendix H: Public Chapter 1	149
Appendix I: Tennessee Department of Education State Mandated Minimum Salary Schedule for Superintendents/Directors	151
Appendix J: 2011 Report Card.....	153
Appendix K: State Mandated Minimum Licensed Instructional Personnel Salaries	155
Appendix L: 2011–2012 Shelby County Schools Salary Schedule	157
Appendix M: 2011–2012 Memphis City Schools Salary Schedule	159
Appendix N: Tenn. Code Ann. § 49-2-203 - Duties and Powers of the Board Education	161
Appendix O: Chancellor’s Opinion	169

**A Report on the Feasibility to Form a School District for the Municipality of Lakeland,
Tennessee**

Prepared for the Mayor and Board of Commissioners:

Scott Carmichael, Mayor

Don Barber, Commissioner

Randy Nicholson, Commissioner

Cecil Tompkins, Vice Mayor

Dr. Gerrit Verschuur, Commissioner

City Manager Robert Wherry

Executive Summary

In Fall 2011, Southern Educational Strategies, LLC (SES) was contracted as a consultant to develop a feasibility study for the City of Lakeland regarding the potential establishment of a municipal school district. SES agreed to perform the reasonably necessary analyses and research to furnish the municipality a report that included the following content:

- a. An analysis of current legal and regulatory requirements and issues reasonably expected to arise should the municipality choose to establish a municipal school district;
- b. An overview of the essential academic program and operational program requirements that the municipality could reasonably anticipate encountering should the municipality choose to establish a municipal school district, along with suggested courses of action to successfully meet those requirements, provided, however, that the feasibility study is limited to the creation of a municipal school district and not its ongoing operation;
- c. An analysis of the fiscal requirements and a 2011 estimate of the total annual general operational revenues and expenditures (priced at a current dollar value) that the municipality could expect to receive and incur should it choose to establish a municipal school district.

The analyses and research performed by SES and its associates led to the findings summarized as follows:

- a. With regard to legal and regulatory issues, it is opined that Lakeland has the authority to create a municipal school district as provided in Public Chapter 1 of the 2011 Acts of Tennessee that revived the power of municipalities to create municipal school districts. Because this legislation did not address transfer of facilities from the Shelby County Schools to a municipality, an informed legal opinion is offered based on pertinent case law, the essence of Chapter 1, and the history of past practices regarding school facility transfer in Shelby County. Based on this legal research, it is the opinion of SES and its attorneys that a Lakeland municipal school district has the legal authority to receive transfer of and control of the school facility now located within its boundaries and to have that transfer occur without the imposition of costs with respect to that facility.
- b. With regard to operational issues concerning the feasibility of a new municipal school district's ability to offer educational opportunities comparable to existing Shelby County Schools programs, an intensive analysis and projection of Average Daily Membership (ADM) enrollment data was conducted followed by a fiscal analysis. This analysis led to the finding that sufficient enrollment would exist to provide a comparable educational program. The leaders of the City of Lakeland stated a strong desire to create a school district that places students as the top priority and permits students to attend their current schools so long as instructional space permits. Therefore, these projected enrollment data for the school within Lakeland includes all current public school students who reside within the City of Lakeland municipal boundaries who are currently zoned to attend Lakeland Elementary School. In addition, the students who reside within the City of Lakeland and who are currently zoned to attend schools located in either Arlington or Bartlett have been included in the projected enrollment calculations for their currently assigned schools in those respective municipalities. Leaders of both the Town of Arlington and the City of Bartlett have indicated a willingness to continue to serve these students from the City of Lakeland under a negotiated Cooperative Educational Contract so long as instructional space permits. As reported by categories used in

the Tennessee State Department of Education *Report Card*, the projected Lakeland municipal school district racial and ethnic composition will be: African American 7.06%, American Indian .24%, Asian 9.25%, Hispanic 1.58%, Multi-racial .73%, Pacific Islander .12%, and White 81.02%. Therefore, with a projected total of 819 students, it is feasible to offer a K-5 elementary school educational program that includes the requisite curriculum staffed by sufficient numbers of qualified teachers, administrators, support personnel such as counselors and subject matter experts, office personnel, instructional technology personnel, in addition to other critical areas such as transportation, nutrition services, maintenance and operations, and custodial services. The Tennessee State Board of Education minimum scholastic population requirement for municipal school districts is addressed in the legal analysis section of this document. Current (2011 – 2012) Shelby County Schools average teacher salaries and benefits were used in personnel cost estimates because new districts will be legally required to provide the same teacher salaries.

- c. Analysis of fiscal requirements concerned projected revenues and revenue sources that will be anticipated for the new district as well as projected expenditures. Revenue generation focused on funds derived from local and state sources that would support the operational components (federal program funds and nutrition-related operations areas are “pass-through” funds and were not included). Fiscal issues associated with education expenditures employed detailed templates that present the estimated required operating costs required to create an educational program comparable to that provided by the current Shelby County Schools. Tennessee State Board of Education rules require municipal school districts to *spend* , annually, an amount of local funds for school operations equal to the revenue that would be produced by a levy of \$.15 cents on a local property tax. The City of Lakeland does not levy a local property tax at this time. Therefore, the required *spending* amount was calculated based upon the total revenue that would be produced by the establishment of a fifteen (15) cent Lakeland municipal property tax. However, detailed analyses of other local revenue sources revealed that approximately 66% of the local *spending* requirement for a Lakeland municipal school district also could be accomplished with a ½ cent increase in the local option sales tax rate. A ½ cent local option sales tax rate increase could reduce the amount of a new City of Lakeland property tax. These analyses led to the finding that a new municipal district was fiscally feasible, however, it is likely that the City of Lakeland will need to establish an adequate local property tax to fully meet the required school spending rule. Full details are found in the Fiscal section and in the Summary and Recommendations section of this document.

Subject to the potential need to establish a City of Lakeland property tax, the detailed analyses of legal, operational, and fiscal data as presented in the body of the feasibility study report regarding the potential creation of a municipal school district in the City of Lakeland lead to the conclusion that formation of such a school district is feasible. Because of the complexity associated with the creation of a new school district, a number of recommendations were offered within the study that may guide future action by the Lakeland leadership leading to a successful school district opening in August 2013.

The Southern Educational Strategies, LLC team strongly believes that all public school operations and decisions should be measured in student benefits. Concerns for the best interests of children have guided the development of and the recommendations found in this study. The authors hope that the data and information provided herein will lead to decisions that serve the best interests of the young people who may receive a public education in this municipality.

Introduction to the Study

The purpose of this study, as submitted by Southern Educational Strategies, LLC, is to provide the citizens of Lakeland with data and information that will assist their decision regarding the formation of a municipal school district. The study addresses three key components: legal and regulatory issues, operational issues, and fiscal issues. We believe that these topics are central to informed decision making. We also recognize, however, that the final decision regarding the formation of a municipal school district should and does reside with the local citizens.

Education is controversial but controversy can lead to change and improvement. Various viewpoints regarding school district organization and size have been voiced for well over a century. In many respects, the concerns are related to the topic of local control of education. In our United States, unlike many nations, education is controlled by the individual states rather than the federal government. The absence of any reference to education or schooling in the United States Constitution, along with the Tenth Amendment, renders education a state function. As the respective states organized their local systems of education, over 13,000 regular public school districts resulted (as of 2008-09), each with their own board of education, policies, procedures, curricula, and administrative structures.

Clearly, educational excellence is central to our democratic form of government and can lead to prosperity and opportunity. Proponents of local governance, especially through smaller district organization, believe that education is enhanced through a reduction in the bureaucracy associated with larger districts. A smaller district makes it easier to consider the unique needs of local students especially as related to the curriculum that is offered.

The three founding partners of Southern Educational Strategies, LLC (SES) bring, collectively, over a century of knowledge, experience, and expertise to this study. Our work as successful practitioners and researchers contributes, we believe, to a document that will guide discussions and help shape decisions related to this critical determination of the best educational structure for the children of this community. In addition to our own knowledge, we have incorporated in this study the work and analyses of many other trusted and experienced professionals. Most importantly, the SES team believes that all public school operations and decisions should be measured in “student benefits.” Concern for the best interests of our young people has guided the development of and the recommendations found in this study.

As the young people of Lakeland enter the second decade of the 21st century, the citizens have a huge responsibility in regards to their educational opportunities. As Douglas Reeves, noted education

writer and scholar recently stated, *listen to the skeptics and avoid the cynics when making crucial decisions. While the skeptic demands evidence, the cynic finds no evidence sufficient for change. While the skeptic can be persuaded, however reluctantly, with data and analysis, the cynic's mind is made up before the argument begins* (American School Board Journal, October 2011, p. 40).

The founding partners of Southern Educational Strategies, LLC hope and trust that this document will offer accurate data, experienced based recommendations, practical information, and guidance to the citizens of Lakeland throughout this important process.

Feasibility Study Methodology

The study addresses three key educational components critical to determining the feasibility of a newly formed municipal school district: (a) legal and regulatory issues, (b) operational issues, and (c) fiscal issues. Considerable information and data were collected and analyzed as these components were addressed.

In order to understand the legal and regulatory issues, a thorough analysis of current Tennessee statutes, legislation, and applicable court cases was executed. This analysis was conducted with the assistance of a team of veteran attorneys who possess extensive experience in Tennessee school and municipal law. This section includes the creation of municipal school district information obtained from Tennessee Code Annotated and Tennessee State Board of Education rules and regulations, information on required local referendums, and school board elections. In addition, this section includes Tennessee case law, legal opinions, and findings regarding school facility transfers. Further, the past practices are included regarding the actual transfer of school facilities, furniture, fixtures, and equipment from the Shelby County Schools to a special school district, namely Memphis City Schools. These actual data, derived from the Shelby County Schools to the Memphis City Schools facility transfer past practices review, cover at least 44 schools transferred from the 1960's to 2010. These reports and data are informative to the questions related to existing school facilities and their transfer to a newly formed municipal district.

Operational issues that were studied addressed the requirements associated with providing, at a minimum, comparable educational opportunities for the students of Lakeland as compared with existing Shelby County Schools programs. Factors included numbers of required teachers, administrators, support personnel such as counselors and subject matter experts, office personnel, instructional technology personnel, in addition to critical support areas including transportation, nutrition services, maintenance and operations, and custodial services. It is very important to note that numerous school district operational efficiencies are routinely accomplished through “ Cooperative Educational Contracts (CEC)” established between one or more local public school districts.

Numerous cooperative contracts have been used over many years between Shelby County Schools and Memphis City Schools to serve students who resided outside of school district and/or City of Memphis boundaries, to provide transportation services, and to provide services for exceptional children. The powers granted in TCA § 7-51-908, TCA §49-2-1101 and in TCA §49-2-1301-08 are the basis for any such contracts that must be established between the board of education for any new municipal school district and the Shelby County Board of Education to enroll students who currently reside outside the

municipality's boundaries but who are currently zoned to attend schools located within a municipality. Cooperative Educational Contracts could also be utilized between local school districts to provide major support services such as transportation, information technology, maintenance, and nutrition services. These topics are addressed in more detail in later sections of this study.

The third area addressed by this study concerned fiscal issues (i.e., analysis of revenue streams and projected expenditures) associated with a new school district. One of the variables central to fiscal analysis, as well as school district organization and operation, is student enrollment. Enrollment shapes the nature of the curriculum and instruction, revenue streams, expenditures, facility requirements, transportation, food services, infrastructure requirements, and virtually every other aspect of the educational system. To this end, one of the first tasks was the collection and extensive analysis of existing Shelby County Schools student data. The leaders of the City of Lakeland stated a strong desire to create a school district that places students as the top priority and permits students to attend their current schools so long as instructional space permits. Therefore, these projected enrollment data for the school within Lakeland includes all current public school students who reside within the City of Lakeland municipal boundaries who are currently zoned to attend Lakeland Elementary School. In addition, the students who reside within the City of Lakeland and who are currently zoned to attend schools located in either Arlington or Bartlett have been included in the projected enrollment calculations for their currently assigned schools in those respective municipalities. Leaders of both the Town of Arlington and the City of Bartlett have indicated a willingness to continue to serve these students from the City of Lakeland under a negotiated Cooperative Educational Contract so long as instructional space permits. A map of the Lakeland schools is presented in Appendix A. Student data were also analyzed for specific characteristics and demographics such as grade level, race, ethnicity, special or exceptional education needs, English language learners, and career and technical education. It is important to note and emphasize that this study did not merely pro rate existing enrollment data for Lakeland. Student enrollment data for more than 30,000 students drawn from the 2011-2012 Shelby County Schools database were disaggregated by geographic location and then tracked to the proposed new municipal school districts. This very detailed research provided actual 2011-2012 Average Daily Membership (ADM) student enrollment data customized for each municipality.

Fiscal issues associated with revenue generation focused on funds derived from local and state sources that would support the operational components. Federal funds were not included as these are essentially flow-through funds used to supplement special instructional areas. Analysis related to school nutrition revenue was also not included as these are flow-through funds. The detailed fiscal

analysis of state revenues was based on actual SCS Average Daily Membership (ADM) as described above and generated by the Tennessee Basic Education Program funding formula.

In fall 2011, Southern Educational Strategies engaged Basis Policy Research (“Basis”), an independent consulting firm, to simulate the inclusion of six new school districts in Shelby County under Tennessee’s Basic Education Program (BEP). We refer to those new districts as Arlington, Bartlett, Collierville, Germantown, Lakeland, and Millington Schools, respectively (or “the New Districts”).

The purpose of the Basis research was to calculate reliable estimates of the funding costs and projected state revenue for the New Districts assuming their active and independent operation during fiscal year 2011-2012. To attain these customized estimates, Basis customized the state’s actual Microsoft Excel-based BEP model to estimate the revenues for K-12 public education in each district. Basis then divided and equalized that revenue between state and local obligations. Basis defined state obligation as the amount of BEP-allocated funding each district would receive from the state, plus local obligation as the remaining amount the district must (at minimum) fund itself. The Basis BEP analysis is presented in greater detail in a later section of this report.

In addition to BEP funding, additional analyses of the Shelby County local option sales taxes and Shelby County property taxes were performed including the Tennessee State Board of Education required local municipality revenue and “*spending*” contribution rule. Each municipality was contacted, and the finance department from each city or town confirmed the total dollar amount that one penny (\$.01) on their own municipal property tax would produce in the current FY 2012 budget year. This “penny value” was used to determine the local revenue that *would* be generated by the establishment of a new fifteen cents (\$.15) municipal property tax rate within the City of Lakeland. The fifteen cents (\$.15) threshold meets the Tennessee State Board of Education municipality minimum *spending* requirement, and this minimum amount of local municipal funding is included in the detailed revenue estimates found in the Fiscal Information section of this study.

Fiscal issues associated with education expenditures employed detailed revenue and expenditure templates that present the estimated required operating costs, broken out by standard school budget categories, required to create an educational program comparable to that provided by the current Shelby County Schools. The ratio of Lakeland Average Daily Attendance (ADA) to the Shelby County Schools ADA offered a basis for cost and budget calculations. Actual ADM enrollment data provided a basis for projection of the instructional personnel – a major expenditure in any education budget – by school (assuming re-staffing at the same faculty ratios as 2011 - 2012). Current (2011 – 2012) Shelby County Schools average teacher salaries and benefits were used in cost estimates as new

districts will be legally required to provide the same teacher salaries (State Board of Education Rules, Chapter 0520-1-8). It must be noted that Tennessee Consolidated Retirement System contributions from each school district are subject to change from year-to-year according to state actuarial analysis. Personnel assignments related to special education and career and technical education were based on current staffing ratios in order to offer comparability to the existing program.

An important related component included the analysis of facility capacity of Lakeland Elementary School and the most effective utilization of this resource. As previously stated, actual ADM enrollment data provided a basis for projection of the required instructional personnel in the school. Again, it is important to note and emphasize that this study, unlike some feasibility studies, did not merely pro rate existing enrollment data for Lakeland (or any of the participating municipalities). Student enrollment data for more than 30,000 students drawn from the 2011-12 Shelby County Schools database were disaggregated by geographic residence location and then tracked to the proposed municipal districts.

Support services are prime areas for potential savings and efficiencies for joint school district operation through the use of Cooperative Educational Contracts as described above. However, to provide for independent expenditure estimates for each municipality, support service costs were estimated as follows. Custodial services estimates were based on costs provided by GCA Services Group, Inc. that is currently contracted in Shelby County Schools. Maintenance and operation services costs were estimated based on current SCS costs. It is possible that these services may be handled all or in part by the municipality public works staff and could result in reduced costs. The unique requirement for maintenance services, however, must be carefully considered due to the nature of school facilities and the students. For example, a rest room, laboratory, or food preparation area in need of repair or a water leak requires immediate attention, unlike some public facilities.

Transportation cost estimates were estimated based upon the current Shelby County Schools costs. Approximately 50% of the current Shelby County Schools students are transported by school bus. The transportation costs were estimated based on this percentage. In addition, SES obtained estimated transportation costs from a school transportation contractor, Durham School Services. These data will be noted in a later section of the study.

Technology expenses were estimated at level that would provide comparable services as presently exist. These expenses include faculty laptop computer leases, staffing, management and instructional technology support, computer repair, business services, communications, and telephony. Nutrition service expenses are addressed in a later section of the study. Lastly, expenses associated with major capital improvements are not included in the operating expenses. However, the Shelby

County Schools five-year capital improvement plan provides information regarding future capital needs at various schools and the plan is included in Appendix B.

A Brief Review of the Literature and Research Related to Enrollment Size in School Districts

The structure of the American school district, as we know it today, has a century-plus history based in the concepts of scientific or industrial management. Efficiency of operation, labor productivity, and cost control were major concerns of Frederick Taylor and were evident in his theories of scientific management that became popular in the early 1900s. Therefore, it is of no surprise that early schools and school districts were viewed as industries or factories in which the products were educated children. Inherent features of such a bureaucracy are rules, regulations, standardization of processes, and loss of worker (i.e., the educators) creativity and autonomy. As many districts grew larger in this quest for industrial efficiency, innovation and creativity suffered. And did this model yield more efficient operations? Many scholars argue that cost savings were never realized but learning did suffer along with innovation.

From the mid-20th century until the present day, the cost of American public education has increased more than five times after adjustment for inflation. Yet, today we find our nation near the bottom in learning and overall student achievement. What caused us to be at the top in spending and near the bottom in achievement? Many parents, educators, and scholars of various fields consider the organizational structure of school districts to be a major contributor to this cost/achievement chasm; during the past half century, the number of school districts declined dramatically. Between 1950 and 1980, the number of districts fell from 83,642 to 15,987 (Kenny & Schmidt, 1994). According to the National Center for Educational Statistics (NCES), the number of districts declined further to 13,809 in 2008. School district enrollment size and how enrollment size relates to student success and achievements, have been, and continue to be, a matter of concern and are the subject of this discussion.

Our nation's school districts vary considerably in size. According to the National Center for Education Statistics (NCES), in 2008-2009 the 100 largest public school districts, representing less than 1 percent of all school districts in the United States and jurisdictions, were responsible for the education of 22 percent of all public school students. The Memphis City School District was ranked 27th in 2008-09 in total enrollment with 111,954 students. According to the Tennessee DOE Report Card, Memphis City had 102,798 students and Shelby County had 46,249 students as of December 2011 (<http://edu.reportcard.state.tn.us>).

The research related to school and school district size as an influence on school performance has a long history and a large body of literature (Bickel & Howley, 2000). There are two important perspectives on school district size that have shaped debates, research, and policy since the earliest

days of American public education. The first perspective concerns economies of scale issues (e.g., administration, facilities, support services, etc.) and the ability of a district to provide resources for specialized instructional programs. The second perspective concerns the organizational and bureaucratic structures necessary in larger districts and their influences on social systems, decision making, interpersonal relationships, and concern for the individual student. Following these perspectives, arguments for larger districts are shaped by the industrial organizational model referenced earlier that argues “bigger has to be better” and that “quantity leads to quality” as a result of such economies of scale. When measured by the variables of community involvement in the schools and district, students’ participation in school programs and extracurricular activities, and academic focus on student achievement, the bigger is better argument becomes less persuasive. For instance, as research designs took into account criteria such as achievement, pupil self-image, and success in college, economies of scale were diminished (Swanson, 1988).

Throughout the nation, states were encouraged, especially during the 1960s and 1970s, to consolidate their smaller districts with counties or other districts in the spirit of efficiency. A Tennessee study regarding city and county school district consolidation was prepared for the Memphis City Schools Board of Commissioners in 2001 by Rhodes College professors Pohlman, Clay, and Goings. This study concerned Nashville, Knoxville, and Chattanooga consolidations and addressed such topics as quality of education, educational disruption, race or class flight, increased racism, impact on teachers, governance, costs, and efficiency. While some of the findings of the study were positive in regards to consolidation impact on the community, one observation from the Knoxville research is worth noting:

Every account concurred that the way Knox County arrived at consolidation was not the way it should be done. They definitely do not recommend having the city school system simply surrender its charter, creating consolidation by default. Without a plan, there ends up being unnecessary uncertainty, fear, litigation, and so on (p. 96).

Supporting other research related to absence of efficiency of operation and economy of scale, the following Knoxville observation was made:

Although there will be some savings eventually in terms of reducing the number of central office administrators; there also will be added costs involved in the process of equalization. In the end, there is not likely to be a net reduction in overall school spending. **If anything, there may well be a net increase in expenditures** (p. 97). [Emphasis supplied]

A similar finding regarding school district expenditures in the Hamilton County and Chattanooga:

Before consolidation, both systems maintained nearly the same rise in expenditures, with Hamilton County growing at [sic] 12.7% from 1994-1995 through 1996-1997 and Chattanooga seeing a rise of 13.5% during the same period. After consolidation, however, the funds expended per pupil rose significantly each year, going from \$4,487 in 1997-1998 to \$6,440 in 1999-2000, **an overall increase of 43.5% in three years** (p. 144). [Emphasis supplied]

As previously stated, the focus of this discussion is on quality of education as related to larger and smaller districts. Like much of the general education literature and empirical research, studies report mixed findings. For example, according to Berry and West (2005), "The empirical literature on the effects of district size on student outcomes is smaller and less consistent in its findings. Walberg and Fowler (1987) and Ferguson (1991) find a negative relationship between student achievement and district size, controlling for student and teacher characteristics, in New Jersey and Texas, respectively. However, Berry and West concluded that "We find that the modest gains associated with larger districts are likely to be outweighed by the harmful effects of larger schools" (p. 24).

Hobbs, in his review of the pre-1989 literature, stated that "these studies and many others that could be cited don't prove anything regarding student performance other than to effectively eliminate school district size as much of a factor affecting student performance." However, a slightly different interpretation is provided by Webb who indicated that the research falls into two camps, "those that found no consistent relationship between district size and student performance and those who found a negative correlation." Webb, in a study of Utah districts, quoted W. Niskanen and M. Levey, University of California, and Berkeley, "School District Size has a consistent negative relation to student performance" (p.134). Howley, in a 1989 paper, observed that "recent studies uncover a negative relationship between school (or district) size and student achievement." This advantage might come from the effect of small size on the achievement of disadvantaged students (Cited in Miley & Associates, Inc., 2003).

Walberg (1992) referenced several studies that investigated school district size and student achievement. These studies typically control for educational costs, student socioeconomic status, and other variables. Monk (1987) found lower levels of efficiency in larger New York districts as compared to small districts. As mentioned earlier, Walberg and Fowler's 1987 analysis of New Jersey districts showed an inverse size-achievement relationship. Another study found larger Colorado districts to achieve less efficiently.

A 2003 study by Driscoll, Halcoussis, and Svorny in California examined the impact of district size on student academic performance. Their results pointed toward reducing school district size, along with school and class size at the elementary level, as potentially important to educational reform. Kidd (1986) presented some of the arguments and reviews the research on small school districts. Based on experiences in Indiana, he contended that consolidated school superiority is exaggerated and concluded that, with proper planning and innovation, small schools can effectively share human, material, and financial resources.

Andrews, Duncombe, and Yinger (2002) reviewed cost function studies related to district size and concluded that per pupil costs may continue to decline until an enrollment of about 6000 when diseconomies of scale appear. Such cost function analyses do not consider the opportunity costs of increased travel time for students. Spending more time on a school bus each day detracts from instructional time not to mention the likelihood of involvement in the school by parents and the community. Likewise, Driscoll, Halcoussis, and Svorny (2003) reported that when student population characteristics and other environmental factors are controlled (e.g., class and school size), large district size appears to hinder school achievement. In other words, district size has a negative effect on educational quality and student performance with the largest effect being at the middle school level.

What does lead to quality is the design of a school district. An interesting study of 25 small school districts in 21 states by Schmuck and Schmuck (1992) led to 3 important recommendations for a united and quality school district: (a) transactional communication, (b) polyarchic influence, and (c) respect for the individual. Transactional communication refers to a reciprocal exchange of communication in which participants attempt to be helpful to each other, emphasizing the bidirectional influence of the communication. The transactional character between teacher and student or principal and parent is worth noting as they influence each other. Polyarchic influence is a concept from organizational theory that suggests that power can be wielded at every level (or hierarchy) in a school district. For example, subgroups such as the school board, administrators, teachers, and students should participate in and share power over important decisions. Respect for the individual is generally considered a core American value. Critical to an organizational structure wherein respect for the individual is practiced are communication, cooperation, and recognition of the importance of personal relationships. In many ways, a great school district is part of the American dream and these components are essential elements of the blueprint. Creating and sustaining personal relationships, effective communication, and mutual cooperation are more difficult to achieve in large, bureaucratic school districts.

Much of what has been learned from decades of research related to school district size could probably be applicable to local government in general. As guest columnist, Lee Harris, a recently elected member of the City Council for the City of Memphis, stated in a *Commercial Appeal* article regarding Shelby County Commission election district maps, “What is good about smaller districts, like mine, is that these districts give voters a slightly better chance of holding their elected officials accountable.” Additionally, “In large districts, it seems to me the answer is that everyone is to blame. And that's basically the same as saying no one.” (December 3, 2011).

In conclusion, evidence and research to-date do not provide the “magic number” for optimal school district size. However, most research of the past 2 decades has indicated that large district enrollment size is negatively associated with most measures of educational productivity such as achievement levels, dropout rates, grade retention rates, and college attendance rates. Studies and empirical research tend toward a conclusion that with other things being equal, smaller districts promoted student performance, especially in lower socioeconomic areas. Big does not necessarily lead to better. Quantity does not lead to quality.

List of References

- Andrews, M., Duncombe, W., & Yinger, J. (2002). Revising economies of size in American education: Are we any closer to a consensus? *Economics of Education Review*, 21(3), 245-262.
- Berry, C.R. & West, M.R. (2005). Growing pains: The school consolidation movement and student outcomes. *Journal of Law, Economics and Education*. 26(1), 1-29.
- Bickel, R. & Howley, C. (2000). The influence of scale on school performance: A multi-level extension of the Matthew Principle. *Education Policy Analysis Archives*, 8(22).
- Driscoll, D., Halcoussis, D., & Svorny, S. (2003). School district size and student performance. *Economics of Education Review*, 22(2), 193-201.
- Kenny, L.W. & Schmidt, A.B. (1994). The decline in the number of school districts in the U.S.: 1950-1980. *Public Choice* 79: 1-18.
- Kidd, K. (1986). Small school districts: An asset to education. *Spectrum*, 4(1), 16-21.
- Miley & Associates, Inc. (2003). *School district organization in South Carolina: Evaluating performance and fiscal efficiency*. Report prepared for The Education Oversight Committee.
- Monk, D. H. (1987). Modern conceptions of educational quality and state policy regarding small schooling units. In *Source book on school and district size, cost, and quality*, (pp. 36-51). Minneapolis, MN: Minnesota University, Hubert H. Humphrey Institute of Public Affairs; Oak Brook, IL: North Central Regional Educational Laboratory.
- Pohlman, M.D., Clay, J.A., & Goings, K.W. (2001). *School consolidation: State of Tennessee, a report on the state of consolidated city and county school systems*.
- Swanson, A.D. (1988). The matter of size: A review of the research on relationships between school and district size, pupil achievement and cost. *Research in Rural Education*, 5(2), 1-8.
- Schmuck, R.A. & Schmuck, P.A. (1992). *Small districts, big problems: Making school everybody's house*. Newbury Park: Corwin Press.
- Tennessee Department of Education. <http://www.tn.gov/education/>
- U.S. Department of Education, National Center for Education Statistics. (2009). Table 90: Number of public school districts and public and private elementary and secondary schools: Selected years, 1869-70 through 2008-09 *Digest of Education Statistics* Retrieved from http://nces.ed.gov/programs/digest/d10/tables/dt10_090.asp
- Walberg, H. J. (1992). On local control: Is bigger better? In *Source book on school and district size, cost, and quality*, (pp. 118-134). Minneapolis, MN: Minnesota University, Hubert H. Humphrey Institute of Public Affairs.
- Webb, F.R. (1989). A district of a certain size: An exploration of the debate on school district size. *Education and Urban Society*, 21(2), 125-139.

Overview of Tennessee Educational Finance System

Basic Education Program (BEP)

In every state except Hawaii, responsibility for the funding of public education is shared between the state and its respective local districts. In the State of Tennessee, educational monies are generated and distributed through the Basic Education Program (BEP) that was enacted by the General Assembly in 1992. Funds generated by the BEP are what the state has defined as sufficient to provide a basic level of education for Tennessee's PK-12 students. The BEP is solely a funding formula and not a spending plan. One of the driving forces behind Tennessee's BEP is to improve equity, not equality, in funding among the state's current 136 school districts. This is consistent with such systems across the nation, many of which have been challenged through litigation related to fiscal equity and equal educational opportunity across a state's districts that may vary considerably in wealth and ability to fund local education. In other words, wealthier districts with larger tax bases could fund a better education with lower tax rates than areas with poorer tax bases. Some changes to BEP were included in 2007 as part of BEP 2.0 including an increased state percentage share of funding, elimination of a cost differential factor, requirement of 100% funding for at-risk students in K-12, adjustment of student per teacher ratio in some categories, and a change in the local fiscal capacity index.

BEP payments are made to school districts 10 times per year. The BEP contains 45 components that are grouped into three major categories: instruction, classroom, and non-classroom. Instruction components include teachers, librarians, principals, assistant principals, system-wide instructional supervisors, special education and vocational supervisors, social workers, special education assessment personnel, psychologists, special education early intervention, plus staff benefits and insurance. Classroom components include textbooks, materials, technology, nurses, duty-free lunch, substitute teachers, etc. Non-classroom components include superintendent, secretarial support, non-instructional equipment, pupil transportation, staff benefits and insurance, and capital outlay. These categories are divided into state and local shares based on a complex equalization formula. This process determines how much of the BEP is supported by the state vs. the local district and is driven primarily by the fiscal capacity of each county in relation to the fiscal capacity of all counties in Tennessee.

(<http://www.comptroller1.state.tn.us/Repository/RE/BEP%20Presentation%20to%20House%20Education%202.pdf>) .

Student enrollment, as measured by average daily membership (ADM), is the primary variable that provides funds generated by the BEP. ADM is defined in Tennessee Code as "sum of total number

of students enrolled divided by the number of days school is in session during this period.” The BEP is comprised of 45 components most of which are driven by ADM (e.g., students/teacher, assistant principals/school, textbook dollars/student as briefly described above). Local districts are required to raise additional funds beyond those generated by the BEP (www.tn.gov/sbe/html; *Tennessee Basic Education Program: BEP 2.0*, 2010-11).

The complexity of calculations associated with BEP cannot be overstated. Transportation funding, for example, employs a 3-year average of actual expenditures, inflationary adjustments, and a multiple linear regression formula that accounts for four other factors (e.g., ADT or average daily transported, ADM, miles, and other variables) to predict costs. The BEP does, however, recognize local variances in fiscal capacity (the relative ability of local governments to generate revenue from their own sources) and attempts to provide a system for sharing the fiscal burden of funding local education between local governments and the state.

As stated earlier, SES engaged the services of Basis Policy Research (“Basis”), an independent consulting firm, to simulate the inclusion of six new school districts in Shelby County under Tennessee’s Basic Education Program. The purpose of the Basis research was to calculate reliable estimates of the state revenues for the contemplated municipal school districts assuming their active and independent operation during fiscal year 2010-2011. These estimates were derived by customizing the state’s actual Microsoft Excel-based BEP model to estimate the total cost of K-12 public education in each district under the Basic Education Program funding model. Refer to Appendix F for Lakeland BEP calculations and for the strategies used to calculate the BEP data.

Shelby County Property Tax

Because Tennessee has no state income tax, school districts are dependent primarily on local property taxes, local sales taxes, and state sales taxes to fund public education. In Shelby County, all property owners, including residents of Arlington, Bartlett, Collierville, Germantown, Lakeland, Millington, Memphis and all unincorporated areas, pay property taxes to Shelby County. Taxes are collected and then the education portion of the tax (as determined by the Shelby County Board of Commissioners) must distributed between all the school districts within the county (currently only two districts -- Shelby County Schools and Memphis City Schools) based on the number students in attendance according to Average daily Attendance or ADA. In Shelby County, in the FY12 budget, education received 58% of all property taxes or \$361,288.000 (Education Fund, FY12 Adopted Budget). The Shelby County Commission approves the budget of the Shelby County Schools (<http://shelbycountyttn.gov/DocumentView.aspx?DID=2900>).

The authority of the County Commission is granted in Tennessee Code Annotated, § 49-2-101(2)(A). In process, as specified in Tennessee Code Annotated, § 49-2-301(f), the superintendent of education for each school district prepares, annually, a budget for the schools, submits the budget to the board of education for its approval, and then presents it to the county or other appropriate local legislative body for adoption.

The amount of Shelby County or municipal residential property tax that one pays is determined by three factors:

- a. The assessed value (25% of the appraised value) of the residential property as determined by the county tax assessor,
- b. the level of assessment for that kind of property, and
- c. tax rate set by the County Commission and city governing bodies (The county property tax rate is established by the county legislative body on the first Monday in July, or as soon thereafter as practical (T.C.A. § 67-5-510).

Taxes are collected by the County Trustee and city collecting officials. There is a separate property tax rate for the county and for each city (except Lakeland) within the county. These 2011-2012 tax rates are as follows: Shelby County (residents who reside in Memphis): \$4.02 and Shelby County (residents who do not reside in Memphis): \$4.06. Property tax rates for the other municipalities are:

- Arlington: \$1.00
- Bartlett: \$1.49
- Collierville: \$1.43
- Germantown: \$1.485
- Memphis: \$3.1889
- Millington: \$1.23

The City of Lakeland currently funds its operations primarily from Tennessee sales taxes, a portion of which reverts to the cities of origin; from a state per-capita rebate of gasoline tax income; and from a few specific fees. (Source: <http://www.lakelandtn.gov/index.aspx?NID=31>)

Therefore, a Lakeland resident's property tax would be calculated as follows:

Assessed value / \$100 x \$4.06 = County Tax

PLUS

No City Property Tax

Source: Shelby County Assessor of Property WWW Site
(<http://www.assessor.shelby.tn.us/Calculate.aspx>)

As discussed in another section of this report, the method for allocating state funds to local education agencies is the Basic Education Program (BEP). The purpose of the BEP is to allocate state funding fairly and equitably, taking into account the ability of local jurisdictions to raise revenues (T.C.A. § 49-3-356).

Since the section provides only a very brief overview, the reader is referred to the following publications for additional information:

1. Tennessee Code Annotated, Volume 9, Title 49.
2. Rules, Regulations, and Minimum Standards of the State Board of Education – available from the Tennessee Commissioner of Education, Sixth Floor Andrew Johnson Tower, 710 James Robertson Parkway, Nashville, Tennessee 37243-0375, or on the Internet at www.tennessee.gov/sos/rules/0520/0520.htm

3. Annual Statistical Report of the Department of Education and other reports published by the state department of education are available from the commissioner of education at the above address, at the Web site of the department of education at www.tn.gov/education, 4. Numerous publications by the Tennessee Advisory Commission on Intergovernmental Relations (TACIR) relative to education funding in Tennessee are available on the TACIR Web site at www.tn.gov/tacir. (https://www.wctaxpayers.com/Laws_for_County_Educ.html)

Local Option Sales Tax

Any county, by resolution of its legislative body, or any city or town by ordinance of its governing body, may levy a sales tax on the same privileges subject to the state sales tax (T.C.A. § 67-6-702). No local sales tax or increase in the local sales tax is effective until it is approved in an election in the county or city levying it (T.C.A. § 67-6-705). If the county has levied the tax at the maximum rate which is currently 2.75 cents per dollar, no city in the county may levy a sales tax. If a county has a sales tax of less than the maximum, a city may levy a tax equal to the difference between the county rate and the maximum. The prior sentence describes the current local option sales tax status in Shelby County. Additional detail is provided in the legal analysis section of this study.

Presently, the Shelby County local option sales tax rate is set at 2.25 cents per dollar. State law requires that 50% of all county local option sales tax collections must be distributed to all local school districts based upon the Average Daily Attendance (ADA) of the students in each school district. Lakeland could increase (if approved by a local referendum) its local option sales tax amount by ½ cent to the Tennessee maximum of 2.75 cents, generating approximately an additional revenue of \$329,631 annually. [See Appendix C for details]. This additional revenue would not have to be shared and, if approved, could be used to fund the municipal school district in addition to the establishment of a City of Lakeland property tax. The additional annual local option sales tax revenue generated by the additional ½ cent sales tax could be used exclusively for education at the discretion of the municipality.

City	Current Rate	Effective Date
Arlington	2.25%	01/1984
Bartlett	2.25%	01/1984
Collierville	2.25%	01/1984
Lakeland	2.25%	01/1984
Germantown	2.25%	01/1984
Memphis	2.25%	02/1983
Millington	2.25%	01/1984

Source: <http://www.tennessee.gov/revenue/pubs/taxlist.pdf>

Required Municipality Financial Revenue Support and “Maintenance of Effort” Requirement

Tennessee State Board of Education Rule 0508-1-8-.01 requires municipalities that create or reactivate city school districts partially fund the operation of their school districts from local municipal revenue sources. The rule reads:

0520-1-8-.01(5) *Spend* each fiscal year for the current operation of its public schools an amount of money in addition to the amount required to be raised by the county at least equal to the that which a fifteen cents (\$.15) tax levy on each One Hundred Dollars (\$100.00) of taxable property for the current year in said city school district would produce if the same were all collected.

It is important to note that the Tennessee State Board of Education rule does not require any city to increase its city property tax rate by fifteen cents (\$.15) to fund a city school system. The rule does require each municipality to provide school operations funding in addition to the amount provided by the county. The rule requires that the city annually “*spend*” for school operations an amount at least equal to the amount that would be generated by a municipal property tax levy of fifteen cents (\$.15). The estimated required annual municipal school district minimum *spending* amount in 2011 for Lakeland is \$491,460.

Therefore, as described above in the local option sales tax section, any municipality in Shelby County could, if approved in a local city referendum, increase its local option sales tax by ½ cent (.05 cents). Most important, the city could retain the proceeds for use at the discretion of the local municipality. This additional revenue, if approved, could be used to fund the municipal school district and reduce the amount of a property tax increase. This additional local option sales tax revenue generated by the additional ½ cent local option sales tax can be used exclusively for education at the discretion of the municipality. Based upon 2010-11 sales tax collections, a ½ cent local option sales tax increase in the City of Lakeland would annually produce approximately \$329,631 [See Appendix C for details]. The above data confirm that a ½ cent increase in the Lakeland local option sales tax would permit the City of Lakeland to meet approximately 66% of the required spending level. Finally, local school district municipality revenue support is also subject to TCA §49-3-314. This is commonly termed “Maintenance of Effort” and requires that local public school district operating funding cannot be reduced in a succeeding fiscal year from the amount provided during the prior fiscal year except in cases of student enrollment decrease.

Legal and Regulatory Issues Regarding Municipal School Districts

An analysis of Common Law and the basic statutory and regulatory requirements related to the creation of municipal school districts was prepared by Jackson, Shields, Yeiser & Holt, Attorneys at Law. This section presents their report and findings.

CREATION OF A MUNICIPAL SCHOOL DISTRICT IN TENNESSEE UNDER CHAPTER ONE OF THE 2011 PUBLIC ACTS

An Analysis of Common Law

And the Basic Statutory and Regulatory Requirements

Prepared by:

Jackson, Shields, Yeiser & Holt

262 German Oak Drive

Memphis, Tennessee 38018

Phone: (901) 754-8001

<http://www.jsylawfirm.com>

I. A Municipality's Authority to Create a School District

In February 2011, the Tennessee Legislature amended Tenn. Code Ann. § 49-2-502(b), (hereinafter referred to as “Public Chapter 1”) reversing course thirteen years after having prohibited existing municipalities from forming new school systems. When it had passed Tenn. Code Ann. § 6-59-112(b) in 1998, the Tennessee legislature had prohibited existing municipalities that had not already formed school districts (as well as any municipalities incorporated after 1998) from establishing a school system. But the February 2011 enactment of Public Chapter 1 made this prohibition no longer applicable to certain municipalities: those in counties where a majority in a referendum vote in favor of transferring the administration of a special school district to the county school district and where the transferring of such administration would increase student enrollment by one hundred percent (100%) or more. Where such an increase in the county school system's enrollment is the result of a referendum, then the transfer of the special school district's administration to the county school system is to take effect at the beginning of the third full year immediately following the certification of the results in the referendum. A copy of Public Chapter 1 is included in the appendices of the full study at Appendix H.¹

In a special referendum conducted on March 8, 2011, and certified on March 17, 2011, a majority of voters in Memphis voted in favor of transferring administration of the Memphis City Schools — designated a Special School District since 1869 — to the Shelby County School System. Transferring the administration of the Memphis City Schools to the County School System will result in an increase in enrollment of more than one hundred percent (100%) — indeed, it will result in at least a threefold increase in Shelby County Schools' enrollment. This means that the transfer will take effect at the beginning of the 2013–2014 school year: the third full school year following the referendum's certification. As a result, “from and after the effective date of transfer” of the Memphis City Schools' administration to the County, the municipalities in Shelby County will no longer be prohibited from establishing municipal school districts.

But as one would expect, a municipality's exercise of this prerogative is subject to statutory limitations. To begin with, Tenn. Code Ann. § 49-2-501(b)(1)(B) states that “there shall be no more than six (6) school districts, including the county system and all city or special school districts” in counties with a population of more than 25,000.² Accordingly, absent some legislative change before the 2013–2014 school year, a total of

¹ The appendices to the full study will include the appendices to this legal analysis.

² Public Chapter 1's reestablishment of the right of certain municipalities to create school systems did not alter this provision, even though on its face it appears outdated given the population number and the referenced census year. It is likely that the reason the provision has not received attention and updating by the legislature, at least in the last decade and a half, is the 1998 enactment of Tenn. Code Ann. § 6-58-112, the provision that prohibited the creation of municipal school districts until the enactment of the Public Chapter 1.

five (5) municipalities in Shelby County will be permitted to exercise the option made available by Public Chapter 1.³ As will be further developed herein, there are a number of statutory and regulatory requirements that will apply to any municipality that chooses to create a municipal school system.

Also, in order for a municipality to establish a school system, it stands to reason that the municipality must actually possess the power to do so. Because Lakeland operates under a “city manager-commission charter”, it derives its powers as a municipality from Tennessee Code Annotated, Title 6, Chapters 18-29. The authority of a municipality incorporated under this type of charter to form a municipal school district is found in Tenn. Code Ann. § 6-19-101(30) wherein the city is empowered to:

(e)stablish schools, *to the extent authorized pursuant to general law*, determine the necessary boards, officers and teachers required therefor[e], and fix their compensation, purchase or otherwise acquire land for schoolhouses, playgrounds and other purposes connected with the schools, purchase or erect all necessary buildings and do all other acts necessary to establish, maintain and operate a complete educational system within the city; ... (emphasis added)

Because the charter of Lakeland is derived from the Code provisions comprising Title 6, Chapters 18-29 of the Code, the foregoing provision and others related to the establishment and operation of schools found in Code provisions are also, *ipso facto*, in Lakeland’s charter. Others include the following:

- Tenn. Code Ann. § 6-21-801, giving the city manager full power to manage and control the city schools;
- Tenn. Code Ann. § 6-21-802, giving the city manager the authority to appoint the director of city schools and fix the salary and duties of that position as well as to appoint, remove and fix the salaries of all other officers and teachers, agents and employees of the school system;
- Tenn. Code Ann. § 6-21-803, assigning to the city manager the responsibility to approve all plans for the erection or improvement of buildings used for educational purposes;
- Tenn. Code Ann. § 6-21-804, requiring that all materials and supplies and equipment for educational purposes be purchased by the city manager;

³ Five municipal school districts plus the Shelby County School System will equal the six (6) total school districts permitted. Except for the Memphis City School System, there are presently no special school districts in Shelby County.

- Tenn. Code Ann. § 6-21-805, providing that state and county funds provided for education be paid to the treasurer of the city;
- Tenn. Code Ann. § 6-21-806, giving the Board of Commissioners authority over the manner in which funds received from the state, county and city taxes shall be paid to the city treasurer;
- Tenn. Code Ann. § 6-21-807, giving the Board of Commissioners the option to assign the control of city schools to a board of education (instead of having the control rest with the city manager), and setting forth provisions as to how and when an election of member of a board of education would occur, should this option be selected.

Despite their appearance in the Code and thus in the city charter of Lakeland, the foregoing provisions empowering the city manager to act in ways described as well as the granting of a choice to the Commissioners to have a board of education are preempted by the terms of the general education laws of the State of Tennessee. As was emphasized earlier, the power of Lakeland to establish schools is exercisable “to the extent authorized pursuant to general law.” By and large all of the authorities and responsibilities ostensibly reserved to the city manager and to the Commission have been overridden by provisions in the general law through which those authorities and responsibilities have been reserved, through Tenn. Code Ann. § 49-2-203 and other provisions in the Code, to a board of education only. To be sure, these preempting provisions will be discussed in the analysis which follows.

In any event, while the power of any municipality to create a school system lay dormant after the Tennessee Legislature’s prohibition against the further creation of municipal school districts in 1998, Public Chapter 1 has revitalized it for those municipalities that can satisfy the preconditions identified in Public Chapter 1. And though it must still comply with the applicable statutory and regulatory requirements for forming a municipal school district which preempt provisions of its charter, Lakeland is such a municipality.

II. The Basic Statutory and Regulatory Requirements for the Creation of a Municipal School District

In addition to revitalizing the opportunity to form municipal school districts, the Legislature’s enactment of Public Chapter 1 also revitalized a number of statutory and regulatory requirements that apply to the creation and operation of a municipal school district for any municipality that satisfies the preconditions set forth in Public Chapter 1 itself. Tenn. Code Ann. § 49-2-106, for example, is entitled “Creation or Expansion of City or Special School Districts,” and states:

- (a) No city school system or special district school system shall be created or reactivated for the purpose of operating a system of schools, unless the school system is large enough to offer adequate educational opportunities for the pupils of grades one through twelve (1–12) in keeping with standards established by the state board of education.
- (b) In establishing the standards, the state board is authorized and directed to take into consideration such factors as:
 - (1) The scholastic population of the city or special school district according to the most recent census;
 - (2) The financial ability per pupil of scholastic population; and
 - (3) The expressed willingness of the people of the city or special school district, as indicated by a majority of its legal voters in a referendum, to raise local funds, which, together with school funds received from the state and other sources, shall be sufficient to provide adequate educational opportunities for their children.

Under this statutory authority, the State Board of Education established a set of basic requirements for creating or reactivating a city school system which are set forth in Chapter 0520-1-8 of the Rules of the State Board of Education. In particular, Rule 0520-1-8-.01 sets out six basic parameters for creating or reactivating a school system:

No city school system shall be created or reactivated for the purpose of operating a system of public schools unless such school system shall:

- (1) Have a scholastic population within its boundaries that will assure an enrollment of at least 1,500 pupils in its public schools, or which has at least 2,000 pupils presently enrolled in the proposed school system.

- (2) Employ a full-time superintendent who shall meet the legal and regulatory requirements for county and city superintendents, and who shall be paid an annual salary of at least the amount paid to a county superintendent of schools having the same training and experience under the state salary schedule.
- (3) Employ teachers whose average training shall be at least as high as the average training of the teachers in the school system, or systems, out of which the new system is to be formed, and pay to each teacher a salary supplement in an amount at least as much as the salary supplement being paid in the parent school system or systems.
- (4) Provide school plant facilities which shall meet the minimum requirements and standards of the State Board of Education.
- (5) Spend each fiscal year for the current operation of its public schools an amount of money in addition to the amount required to be raised by the county at least equal to that which a fifteen cents (\$.15) tax levy on each One Hundred Dollars (\$100.00) of taxable property for the current year in said city school district would produce if the same were all collected.
- (6) Furnish all information as requested by the State Commissioner of Education on behalf of the State Board of Education relating to the creation or reactivation of the new school system, such as supporting statistical and fiscal data; and furnish certified results of a referendum election indicating the willingness of the local people to meet the standards of adequacy as here in above set forth and to provide the necessary local funds to do so, after the new school system's share of the state and other school funds has first been applied.

These six basic requirements provide a convenient and logical structure for the analysis that follows. Many of these requirements are also subject to additional State Board of Education rules and a host of provisions in the Tennessee Code impact each of them as well. These rules and statutes will be discussed at the appropriate juncture. There are, however, several Code provisions that establish a requirement for the creation of a municipal school district that for some reason is not even the subject of any of the six sections of Rule 0520-1-

8-.01. Because the requirement established by these Code provisions is so fundamental to the process, they merit discussion now.

Tenn. Code Ann. § 49-1-102(c) provides as follows:

There shall be a local public school system operated in each county or combination of counties. There may be a local public school system operated by a municipality or special school district. Any local public school system *shall* be administered by:

(1) *a local board of education; and*

(2) *a director of schools.*⁴

The mandate that each school district have a local board of education is further addressed in Tenn. Code Ann. § 49-2-201, paragraph (a)(1) of which states as follows:

Notwithstanding any other law to the contrary there shall be a local board of education *elected by the people.*⁵

Tenn. Code Ann. § 49-2-201 also provides guidance regarding the qualifications of candidates seeking to serve on a board of education and on election requirements. The essential point to be made here, however, is that the election of a school board is a requirement that must occur early in the process of creating a municipal school district. Indeed, given the role the board of education would necessarily play in the fulfillment of the various requirements set forth in State Board of Education Rule 0520-1-8-.01,⁶ logic would dictate that it be the second major step preceded only by a required referendum establishing that a majority of voters are willing to create and provide necessary funds to support a municipal school district. This referendum is a

⁴ Tenn. Code Ann. § 49-1-102(c) (emphasis added). To be sure, the employment of a director of schools is addressed in Board of Education Rule 0520-1-8-.01, specifically in Section (2), and this requirement will be further discussed in the text which follows. However, the fact is the election of a board of education is the primogeniture to the employment of the director of schools. Tenn. Code Ann. § 49-2-203(a)(14)(A) makes it the responsibility of the board of education to hire the director of schools.

⁵ Tenn. Code Ann. § 49-2-201(a)(1) (emphasis added).

⁶ The duties and powers of a local board of education are broad indeed. They are set forth in Tenn. Code Ann. § 49-2-203. A copy of this provision is found in Appendix N of the study.

subject of Section (6) of Board of Education Rule 0520-1-8-.01 and will be discussed in due course below.

Before reviewing State Board of Education Rule 0520-1-8-.01's requirements in detail, there is a significant preliminary matter that should be addressed. What can already be anticipated — which the information that follows will further confirm — is that there is much to do if Lakeland moves forward with creating a municipal school district. First and foremost, a referendum must be conducted, as will be discussed later in more detail. Afterwards, there must be an election of members of the school board. The newly constituted school board would then be required to identify and obtain control over necessary facilities, employ a superintendent who would in turn employ a sufficient number of teachers, administrative, and support personnel. Reports on prospective enrollment, referendum results, and other compliance matters would then have to be submitted to the Tennessee Commissioner of Education on behalf of the State Board of Education. Additionally, a Local Education Agency (LEA) number would have to be issued. To be sure, Public Chapter 1 does not expressly address the question of *when* each of these actions may occur. But the question is answered implicitly.

As stated before, Public Chapter 1's lifting of the prohibition against creating new municipal school districts does not apply universally. It only applies in a circumstance where an event of great impact has been set in motion — namely, where the enrollment in a county school system is projected to more than double because of the pending transfer of a special school district's administration to the county system. Indeed, this event is of such magnitude that Public Chapter 1 (in addition to the rights it provides to municipalities whose resident students would be impacted by the event) establishes a procedure for the governmental entities directly involved in the transfer to follow. To begin with, a transition planning commission must be formed in a specified manner in order to develop a comprehensive transition plan — a plan that the State Department of Education must ultimately review and comment on before it is implemented. Public Chapter 1 also identifies various sections of the Tennessee Code containing a multitude of matters that the comprehensive transition plan must address, one of these being the election of a school board. But as a practical matter, there are many more issues that must be addressed even aside from these Code sections. In sum, the tasks that Public Chapter 1 contemplates are so complex that Public Chapter 1 dictates that the transfer may only “take effect at the beginning of the third full school year immediately following certification of the election results.”

This means that the timing of creating the new school district is a crucial matter that deserves some emphasis. To be sure, one of the central purposes of Public Chapter 1 was obviously to allow an alternative to municipalities whose residents would be impacted by the transfer of a school system's administration where the transfer would more than double the size of the school system that its resident students attend. That alternative course is the creation of a smaller, localized municipal school system. If a municipality is unable to

take the necessary steps to create a municipal school system that would come into operation on the same “effective date” the transfer of administration is to occur, such a failure would frustrate the spirit, intent, and arguably the very letter of Public Chapter 1. Tennessee’s legislature was clear that the restriction imposed on creating new municipal school systems no longer applies “[f]rom and after the effective date of the transfer. . . .”⁷ Its use of the word “from” — and the sense of immediacy and simultaneity it imports — along with the entire comprehensive scheme of action that Public Chapter 1 requires on the part of those charged with effectuating the transfer clearly leads to the conclusion that Lakeland may begin taking steps now to bring about a municipal school system that would commence operations beginning on the “effective date” of the transfer of administration of Memphis City Schools to the Shelby County School System. After all, the planning and associated actions that the planning commission is now undertaking and will continue to undertake, including the election of a school board prior to the “effective date,” do not constitute the “transfer” itself. They are merely preparatory actions taken in advance of the “transfer,” which will not become effective until the beginning of the 2013–2014 school year. Similarly, any required steps that Lakeland takes toward creating a municipal school district do not “create” the school district, but are merely preliminary in nature — indeed, even State Board of Education Rule 0520-1-8-.01 and its enabling statute, Tenn. Code Ann. § 49-2-106, identify them as such.

The State Board of Education Rule — borrowing from the statute itself — begins with the prefatory phrase, “No city system *shall be created* . . . *unless* such system *shall*”⁸ This phrase is followed by particular requirements, such as employment of a superintendent and teachers, providing school plant facilities, holding a referendum “related to the creation . . . of the new school system . . . indicating the willingness of the local people to meet the standards . . . [set forth in the Rule] . . . and to provide the necessary local funds to do so” Obviously, these “steps” are antecedent actions necessary to effectuate the creation of a municipal school system — a system that “shall be created” only upon satisfactory compliance with all requirements. In sum, should Lakeland choose to move forward with creating a municipal school district, it can begin to comply with applicable requirements now in anticipation of commencing and continuing school operations “from” the beginning of the 2013–2014 school year.

A. The Required Scholastic Population

State Board of Education Rule 0520-1-8-.01 provides, *inter alia*, as follows:

⁷ Tenn. Code Ann. § 49-2-502(b)(3) (emphasis added).

⁸ State Board of Education Rule 0520-1-8-.01 (emphasis added).

No city school system shall be created or reactivated for the purpose of operating a system of public schools unless such school system shall:

- (1) Have a scholastic population within its boundaries that will assure an enrollment of at least 1,500 pupils in its public schools or which has at least 2,000 pupils presently enrolled in the proposed school system.

The application of this requirement to Lakeland has already been the subject of a legal memorandum requested of this firm by Southern Educational Strategies. For ready reference, it is reprinted below in its entirety:

MEMORANDUM

TO: Dr. Tim Fite and Dr. Jim Mitchell
Southern Educational Strategies

FROM: Stephen L. Shields
Jackson, Shields, Yeiser & Holt

DATE: October 13, 2011

RE: The Impact of Tennessee State Board Of Education Rule 0520-1-8-.01 On The Prerogative Of The City Of Lakeland To Create A Municipal School District

This memorandum addresses whether the City of Lakeland ("Lakeland") would meet the requirements of subparagraph (1) of Tennessee State Board of Education Rule 0520-1-8-.01 governing the creation of a municipal school district when statutory restrictions now prohibiting the creation of municipal school districts are removed at the beginning of the 2013-2014 school year.¹

Tennessee State Board of Education Rule 0520-1-8-.01 and subparagraph (1) state as follows:

No city school system shall be created or reactivated for the purpose of operating a system of public schools unless such school system shall:

- (1) Have a scholastic population within its boundaries that will assure an enrollment of at least 1500 pupils in its public schools, or which has at least 2000 pupils presently enrolled in the proposed school system. (Emphasis supplied)²

Obviously the Rule sets forth in subparagraph (1) two tests and a municipality is free to create a school system if it meets either one. One test is based on the city's scholastic population. The other is based on the number of pupils presently enrolled in the proposed school system.

Based on data we have been provided, it appears that Lakeland currently meets both tests set forth in the subparagraph and, provided scholastic population and pupil enrollment remains the same or increases by the beginning of the 2013-2014 school year, Lakeland would apparently meet both tests at that time.

Lakeland's Scholastic Population

Lakeland currently has within its boundaries an approximate scholastic population of at least 2,163 individuals. This is known because 2,163 members of that population are currently enrolled in existing public schools located either within or outside the boundaries of Lakeland. It is likely also that there are (and by the beginning of the 2013-2014 school year there would continue to be) more individuals in Lakeland's scholastic population than this number reflects. These would be students presently enrolled in private or charter schools located within or outside the boundaries of Lakeland, or who are homeschooled. Conceivably, these students and their parents or guardians may choose to enter a Lakeland school system if it were to be created. It is also conceivable of course that a choice to leave public school education could be made in the event that Lakeland created a system. That, however, would appear to be far less likely given the numbers of those who have already made their choice in favor of public education. In any event, there appears to be a high level of certainty that were

Lakeland to create a municipal school district there is – and, again, if the population remains static or grows by the beginning of the 2013-2014 school year would be – a scholastic population within Lakeland’s boundaries that would assure an enrollment of at least 1,500 pupils in such a municipal school system.

Presently, there is only one public school facility actually located within the boundaries of Lakeland. The approximate number of students in Lakeland’s scholastic population who attend that school as well as the approximate number of individuals in the population who attend public schools located outside Lakeland’s boundaries are as follows:

The School Within the Boundaries of Lakeland

<u>School</u>	Approximate Number of Students In Lakeland’s <u>Scholastic Population</u>
Lakeland Elementary School	819

The Schools Outside the Boundaries of Lakeland

Donelson Elementary (located in Arlington)	166
Arlington Middle School (located in Arlington)	286
Bon Lin Middle School (located in Bartlett)	219
Arlington High School (located in Arlington)	642

It is our understanding that if Lakeland were to proceed with the creation of a municipal school district, it would likely enter into contracts with other entities regarding the establishment, maintenance and operation of some school facilities that would continue to be located outside the boundaries of Lakeland. This is significant given that the subparagraph at issue requires that a municipality have a scholastic population that assures enrollment of "... at least 1500 in its public schools" (Emphasis supplied) Any issue as to whether schools located outside the boundaries of Lakeland would be considered "its" public schools is resolved by the provisions of T.C.A. § 49-2-1101(a) and § 49-2-1102 which provide, *inter alia*, as follows:

49-2-1101(a) The boards of education of any two (2) or more school systems are authorized and empowered to establish, maintain and operate a public school or schools jointly by entering into contracts for that purpose.

49-2-1102 All schools established, maintained and operated pursuant to a contract entered into under this part shall be considered for all purposes as integral parts of the school systems of each of the counties, cities or special school districts which are parties to the contracts... . (Emphasis supplied)

Based on these provisions, individuals in a municipality's scholastic population who attend schools located outside the municipality's boundaries but which are established, maintained and operated pursuant to a contract entered into by that municipality's board of education and the board of education of another municipality, county or special school district would still be counted as "pupils" in its school system.

Pupils Presently Enrolled in the Proposed School System

Based on current enrollment data set forth above and on an assumption that enrollment would remain constant if not increase by the beginning of the 2013-2014 school year, it appears that Lakeland now has and would have at that time in excess of 2,000 pupils enrolled in the school system that it may choose to create. Thus, it would appear that the second test of subparagraph (1) of the Rule will also be met.

Conclusion

It appears that Lakeland, while required to meet only one of the tests of subparagraph (1) of Tennessee State Board of Education Rule 0520-1-8-.01 as a precondition to creating a municipal school district, will meet both.

The foregoing analysis of subparagraph (1) of Tennessee State Board of Education Rule 0520-1-1-.01 has been made on the population data provided and on what appears to be the plain meaning of the language of the Rule.

Review of Memorandum By State Department of Education Officials

Given the importance of the issue, the fact that the population figures cited do not exceed the applicable thresholds by a significant margin, and the fact that there is not a controlling record of precedent regarding the interpretation of the Rule, SES requested officials at the State Board of Education to review this memorandum, its analysis and conclusions. Those officials who reviewed this memorandum expressed the opinion that the “analysis to be accurate, particular with reference to the 1,500 student enrollment option.” They also believed that Lakeland met the “2,000 pupils presently enrolled” requirement as well.

JACKSON, SHIELDS, YEISER & HOLT

¹ See, T.C.A. §§ 1(b)(1) and 1(b)3.

² This provision is consistent with the statute enabling the creation of the Rule. T.C.A. § 49-2-106(b)(1) directs the State Board to “... take into consideration such factors as: (1) The scholastic population of the city or special school district according to the most recent census;”

Further discussion of Tenn. Code Ann. §§ 49-2-1101(a) and 1102, along with other statutory provisions authorizing joint and cooperative action by and between two or more boards of education, appears in this analysis in Section III, Additional Statutory Provisions.

B. Employment of a Full-Time Superintendent Meeting Legal, Regulatory and Salary Requirements

State Board of Education Rule 0520-1-8-.01 provides, *inter alia*, as follows:

No city school system shall be created or reactivated for the purpose of operating a system of public schools unless such school system shall:

2. Employ a full-time superintendent who shall meet the legal and regulatory requirements for county and city superintendents, and who shall be paid an annual salary of at least the amount paid to a county superintendent of schools having the same training and experience under the state salary schedule.

The requirement of the Rule that a full-time superintendent be employed is first and foremost mandated in Tenn. Code Ann. § 49-1-102(c) and in Tenn. Code Ann. § 49-2-203(a)(14)(A). This latter provision establishes that it is the responsibility of the board of education to employ a superintendent. Further, Tenn. Code Ann. § 49-2-203(a)(14)(B) requires every school board to adopt a written policy regarding the method of accepting and reviewing applications and interviewing candidates for the position of “superintendent” of schools (a title interchangeable with the title “director” of schools).⁹ Under Tenn. Code Ann. § 49-5-406, every board of education must require all applicants for the position of superintendent to submit a written statement indicating whether he has been convicted of a misdemeanor or felony or has been dismissed for certain forms of misconduct. Additionally, each applicant must also submit written confirmation at least thirty days before employment that he has provided or will provide a copy of a written resignation addressed to the school board where he was most recently employed, unless that school board waives the thirty-day notice requirement. Finally, as to pre-employment requirements, applicants for the position of administrator are subject to the provisions of Tenn. Code Ann. § 49-5-413, under which each applicant must agree to undergo a criminal

⁹ See Tenn. Code Ann. § 49-2-301.

background check, to provide a fingerprint sample, and to provide a release regarding all investigation records so that the accuracy of criminal record can be verified.

While State Board of Education Rule 0520-1-8-.01(2) makes reference to certain “legal and regulatory requirements” that a superintendent must meet, it also internally sets forth certain requirements. For example, the Rule indicates that the superintendent is to be “full-time,” which Tenn. Code Ann. § 49-2-301(c) further addresses as well. This provision of the Tennessee Code actually makes it a misdemeanor for any superintendent to “. . . take any other contract under the board of education or to perform any other service for additional compensation, or for any director to act as principal or teach in any school or to become the owner of a school warrant other than that allowed by the director’s service as director.”

The Rule also establishes a requirement that a director be paid an *annual* salary, which then also speaks to the requirement of “full-time” status. As for the amount of the annual salary, the Rule requires it to be at least the amount paid to a superintendent of county schools possessing the same training and experience under the state salary schedule. Attached as Appendix I for illustration purposes only is a copy of the 2011–2012 Minimum Salary Schedule for “Superintendents/Directors” that the State Board of Education publishes. Reference would have to be made, of course, to the then most recent salary schedule when and if Lakeland takes steps toward creating a municipal school system.

As a review of the attached Salary Schedule demonstrates, the Board of Education has five different entries under the heading “Description of Training.” Each is linked to an education level or scholastic degree ranging from a Bachelor’s Degree to a Doctorate. As for the education level required of a director of schools, Tenn. Code Ann. § 49-2-301(d) requires only that a director have a baccalaureate degree, and State Board of Education Rule 0520-1-2-.03(k) merely repeats this requirement.¹⁰

For purposes of tenure, the statutory definition of “teacher” found at Tenn. Code Ann. § 49-5-501(10) includes “director of schools.” A director who is certified may be awarded tenure provided all other statutory requirements are met.¹¹ But currently there is no evaluation process for granting tenure specified for the position of director. If the school board grants tenure to its director, it would do so for the position of classroom teacher, not for the position of “director.” An individual employed in the position of director who has acquired tenure in any other school system, including the Shelby County School System, the Memphis City Schools, or the future consolidated Shelby County/Memphis City System would not be tenured in the municipal school district, *unless* the municipal district’s board of education waives or shortens the

¹⁰ This Rule makes a distinction between a superintendent “appointed by the local board of education” and a superintendent who is *elected*; however, state law does not currently permit a superintendent to be elected.

¹¹ See Tenn. Code Ann. § 49-5-503; *Reeves v. Etowah City School Bd. of Educ.*, 806 S.W.2d 176 (Tenn. 1991).

probationary period.¹²

Perhaps it goes without saying, but the duties and responsibilities of a superintendent/director of schools are many and varied, and a discussion of them is beyond the scope of this analysis. Suffice it to say, these duties and responsibilities are largely, but not comprehensively, set forth in Tenn. Code Ann. § 49-2-301(b)(1) (see Appendix E). Still other duties and responsibilities are randomly located in the Code.

C. Employment of Teachers Meeting the Training and Salary Requirements

Obviously, a school must have teachers. The State Board of Education requires the following in Rule 0520-1-8-.01(3):

No city school system shall be created or reactivated for the purpose of operating a system of public schools unless such school system shall:

- (3) Employ teachers whose average training shall be at least as high as the average training of the teachers in the school system, or systems, out of which the new system is to be formed, and pay to each teacher a salary supplement in an amount in at least as much as the salary supplement being paid in the parent school system or systems.

This Rule obviously addresses two matters: training and pay. Training for teachers (including basic qualifications to hold the position of teacher) are further dealt with by statute and regulation. All teachers that a municipal school district (or any form of public school system) employs must meet the requirements that Tenn. Code Ann. § 49-5-101 and State Board of Education Rule 0520-1-2-.03 set forth. These requirements — especially as they are more fully developed in the Rule — are lengthy and a full discussion of them is beyond the scope of this analysis. The following is a sampling of such requirements:

- A teacher must hold a valid Tennessee teacher license with an endorsement covering the work assignment;
- A teacher must have good moral character and be at least eighteen (18) years of age;
- Teachers teaching in certain settings or teaching certain subject matters must meet the specific standards, with examples of these settings and

¹² Tenn. Code Ann. § 49-5-509.

subject matters being Gifted Education, Computer Technology, Career and Technical Education and Special Education.

Notwithstanding the foregoing, it must be noted that State Board of Education Rule 0520-1-8-.01(3) quoted above, arguably establishes a standard for the employment of teachers by a newly created municipal school district that exceeds the requirements found in Tenn. Code Ann. § 49-5-101 and State Board Rule 0520-1-2-.03. In particular, the Rule requires the employment of teachers whose “average training” is at least as high as the “average training of the teachers in the school system . . . out of which the new system is formed” It can be argued that a Lakeland municipal school system would be one formed out of the Shelby County School System. On the other hand, it could also be argued that a Lakeland municipal school system would be one formed out of the combined Shelby County/Memphis City System. Under Public Chapter 1’s procedures, the transfer of the administration of Memphis City Schools will presumably “. . . *take effect* at the beginning of the third, full school year immediately following certification of the election results,” meaning at the beginning of the 2013–2014 school year. A municipal school district can be created “[f]rom and after the effective date of that transfer.” While the average training levels of teachers in the Shelby County School System can be determined, the “average training” of teachers who would be employed in the consolidated Shelby County/Memphis City School District as of the effective date of the transfer in 2013 is frankly unknowable. Still, data regarding teacher training and education that the Shelby County School System and Memphis City Schools have reported can provide guidance. Current data for each System can be found in the 2011 Report Card for each published by the State Department of Education and is reprinted in Appendix J.

As a practical matter — especially given the unknowable average training of teachers in a school system that will not exist until 2013 — this data (and any updates of it that the State Board of Education may issue) will provide the best and likely the only guidance. As a practical matter, too, given the benefits that all stakeholders in a Lakeland municipal school district — including teachers — could potentially realize from the new district’s manageable size, there likely will be little difficulty in attracting qualified teachers for employment.

To be sure, salaries available at a Lakeland municipal school district would not deter teacher applicants. As can be observed, Section 3 of State Board of Education Rule 0520-1-8-.01 requires that each teacher be paid a salary in an amount at least as much as that paid in the “parent system.” Again, there may be some debate over whether the Shelby County School System or a consolidated Shelby County/Memphis City System would be the “parent system.” If the latter, it is again impossible to predict what teachers’ salaries would be paid in that consolidated system in 2013. But irrespective of this debate, and for general orientation purposes, guidance can be found in data setting forth minimum salaries that the State Board of Education

currently mandates and in the salaries that the Shelby County School System and Memphis City Schools currently pay. The schedule of state mandated minimum salaries for teachers that the Department of Education publishes is attached as Appendix K. Likewise, the salary schedule for 2011–2012 that the Shelby County Schools published is included as Appendix L, and the 2011–2012 salary schedule that the Memphis City Schools published is included as Appendix M.¹³

In addition to salary requirements, a peculiar requirement concerning a particular benefit that may be applicable to newly hired teachers deserves mention. Tenn. Code Ann. § 49-5-710 mandates a sick leave benefit that boards of education in Tennessee must provide teachers. If a teacher who was formerly employed by one board of education in Tennessee is subsequently employed by a newly created municipal school board in the State, sick leave that the teacher accumulated in his/her previous employment is subject to carryover. Upon application by the teacher and submission of a written, notarized verification by the director of schools of the school district where the accumulated sick leave is held, a newly formed municipal school district which hires the teacher must restore the teacher's accumulated sick leave.

Tenure, on the other hand, is not transferable from one school district to another. Under Tenn. Code Ann. § 49-5-509, a tenured teacher who becomes employed with another system is required to serve the regular probationary period in the new system, unless that system's board of education (acting upon the director of schools' recommendation) elects to shorten the probationary period or waive it entirely and grant tenure status.

Pre-employment requirements applicable to teachers are similar to those that apply to a superintendent/director previously reviewed in Section B. above. Tenn. Code Ann. § 49-5-406(a)(1) requires a board of education to have each applicant state in writing: a) whether the applicant has been convicted of a misdemeanor or felony; b) whether the applicant has been dismissed for a certain reasons providing cause; c) that she has or will provide thirty days before employment a copy of a written resignation submitted to the school board where the applicant was most recently employed, unless the formerly employing school board waives the thirty-day notice requirement. Under Tenn. Code Ann. § 49-5-413, a board of education must also require each teacher applicant to submit to a background check, supply a fingerprint sample, and agree to release all investigative records for verification of the accuracy of criminal record.

¹³ Under Tenn. Code Ann. § 49-3-306(a)(1), a school board may establish its own salary schedule as an alternative to the state mandated Minimum Salary Schedule, both in terms of how salaries are structured and the amount thereof. Such an alternative schedule may not reduce salaries of then-current teachers and, in any event, must be approved by the Commissioner and the State Board of Education. Based on data published by the Shelby County School System and by Memphis City Schools, it appears that both are operating under the structure of the State Minimum Salary Schedule, although paying salaries higher than the mandated minimums.

D. Facilities Meeting Minimum Requirements and Standards

1. Requirements For Facilities

The requirements that apply to Tennessee's school facilities exist in both statutory and regulatory form. To begin with, Tenn. Code Ann. § 49-3-311 provides:

The state board shall establish minimum standards for school sites, including locations, school attendance centers, the construction of buildings for school purposes, the remodeling or renovation of buildings for school purposes of a capital outlay nature and for equipment for buildings for school purposes. No board shall obligate or expend any state or local school funds for any project of a capital outlay nature that does not conform to the standards adopted by the state board as authorized in this section.

In accordance with this provision and the State Board of Education's general powers set forth in Tenn. Code Ann. § 49-1-302, the State Board has issued two rules of particular note. The first, the now familiar Rule 0520-1-8-.01, states:

No city school system shall be created or reactivated for the purpose of operating the system of public schools unless such school system shall:

- (4) Provide school plant facilities which shall meet the minimum requirements and standards of the State Board of Education.

The second, Rule 0520-1-4-.01, entitled "School Facilities," states as follows:

- (1) Each school shall comply with rules, regulations, and codes of the city, county, and state regarding planning of new buildings, alterations, and safety. Copies of state regulations may be obtained from the office of the State Architect.

- (2) Each school shall observe all fire safety regulations and procedures promulgated by the Tennessee Fire Marshal's Office.

- (a) Each school shall have at least one fire safety inspection annually. The fire safety inspections will be based on the fire safety inspection checklist developed by the Tennessee Fire Marshal's Office.
 - (b) Copies of the inspection reports, including findings of non-compliance and actions taken to comply, will be maintained in the office of the director of schools and will be available for review.
- (3) Each school shall have classrooms, laboratories, and libraries which are sufficient in number, adequate in space, and so constructed and arranged as to be conducive to carrying on the assigned activities. Playgrounds and physical education facilities shall be well maintained, free from hazards, and large enough to permit an adequate program of physical education.
- (4) Every school system that constructs, remodels, renovates, expands or modifies school buildings or other structures adjunct thereto for use by children with disabilities shall submit plans and specifications for review by the Commissioner of Education. Such plans and specifications shall meet federal requirements.
- (5) For cross references to school facilities laws see the following:
 - (a) Minimum size of high schools, Tenn. Code Ann. § 49-6-403.
 - (b) Requirement for licensed architect or engineer, Tenn. Code Ann. § 62-2-107.
 - (c) Requirement for licensed contractor, Tenn. Code Ann. §§ 62-6-102 and 62-6-103.
 - (d) Bidding and contracting for construction of school buildings, Tenn. Code Ann. § 49-2-203(a)(4).

As can be observed in paragraph (5) of the Rule, various sections of the Tennessee Code apply to the topics specified. For purposes of this analysis, subsection 5(a), “Minimum size of high schools” — and its reference to Tenn. Code Ann. § 49-6-403 — merits attention as it may impact the physical size of a school facility. That Code provision actually deals with more than just a high school’s size. For instance, subsection (b) makes clear that a high school may have no fewer than three hundred (300) students in average daily attendance and that a junior high school may have no fewer than one hundred (100) students in average daily attendance — unless, in either case, the Commissioner and the State Board of Education approve a smaller student body.

Other sections of the Tennessee Code supplement, and in some cases go beyond, State Board of Education Rule 0520-1-4-.01, insofar as potentially impacting the size and number of school facilities, for example:

Tenn. Code Ann. § 49-6-302(a): A board of education must establish and maintain as many elementary (kindergarten through 8th grade) schools as necessary for the instruction of all children in the school district (*see also* Tenn. Code Ann. §§ 49-6-201(c) and 301(a));

Tenn. Code Ann. § 49-6-302(c): A board of education must establish a minimum average daily attendance for each elementary school with the minimum being no less than ten (10), unless otherwise approved by the Commissioner and the State Board of Education; and

Tenn. Code Ann. § 49-6-402: A local board of education may establish and maintain junior and senior high schools.

Still other provisions of the Code deal with a municipality’s or a municipal school district’s authority to deal with myriad matters concerning the district’s facilities, including:

Tenn. Code Ann. § 49-6-2002: A municipality establishing and maintaining a school district may take and condemn the property of individuals and private corporations for the purpose of developing school sites or the

extension of enlargement of existing school facilities;

Tenn. Code Ann. § 49-6-2006: The board of education of a municipal school district may receive donations of money, property, or securities, and may purchase land and erect and equip buildings for public schools, and dispose of property;

Tenn. Code Ann. § 49-6-2007: Surplus property of a school system must be sold or transferred pursuant to the requirements of state law rather than being destroyed; and

Tenn. Code Ann. § 49-10-111: Any construction, remodeling, renovation, expansion or modification of school facilities must be completed in a manner that will facilitate use by children with disabilities.

Finally, in addition to state statutes and regulations, a municipal school district (as well as any public school system or private system receiving funds from the federal government) must comply with many federal statutory and regulatory requirements that apply to the construction, maintenance, and operation of facilities. Examples range from the regulatory requirements contained in Title IX of the Education Amendments of 1972 to the Americans with Disabilities Act and other federal laws prohibiting discrimination against protected groups.

2. Acquisition of Existing Facility

Shelby County Schools currently operates one school within the boundaries of Lakeland city limits.¹⁴ It is well understood that this single facility may not now, nor may it in the future satisfy the “facilities requirements” Lakeland must meet either from a practical or regulatory standpoint were it to establish a municipal school district. This matter has already been addressed in the preceding section of this analysis, specifically with regard to the option of Lakeland under Tenn. Code Ann. §§ 49-2-1101(a) and 1102 to establish, maintain and operate schools jointly with other school systems and still count Lakeland’s residents attending those jointly operated schools as pupils in its school system. Nevertheless, it stands to reason that

¹⁴ This school is Lakeland Elementary.

Lakeland would likely desire to use in its municipal system the facility currently operated within its boundary by the Shelby County System. This proposition invites two basic questions:

1. If Lakeland creates a municipal school district, would it be able to obtain control and use of the school facility within its corporate boundaries that are now controlled and operated by Shelby County Schools?
2. If Lakeland were able to obtain control and use of the school facility of the Shelby County System, would it be obligated to purchase the facility and/or assume debt that may encumber it?

While these are important concerns, Public Chapter 1 simply does not address them. Furthermore, there is no Tennessee statute that specifically addresses transferring control of school facilities to a newly formed municipal school district by a pre-existing county school system. Unfortunately, Tennessee common law does not *directly* address this set of facts either.

But there is a body of case law that can provide some initial guidance on whether and under what terms Shelby County Schools would be required to transfer the school facility to a Lakeland municipal school district if one were created. Those cases involve annexation — that is to say the expansion by a municipality of its geographical boundaries into adjoining territory. Obviously, the difference here is that if Lakeland were to create a municipal school system, it would not be expanding its geographical boundaries. Yet, a municipality's creation of a municipal school system where it had never before operated one — even if not an expansion of “territory” — is at the very least an expansion of the services the municipality provides. And, more pointedly, it is an expansion that displaces the county school system, thereby relieving the county of the duty to continue to provide those services for the population in the municipality.¹⁵ This rationale underlies the proposition that, in the absence of any other source, the case law involving annexation provides the most logical cornerstone on which to begin an analysis of the issues at hand. As will be seen, several statutes and constitutional principles can be layered on to this cornerstone.

To begin with, in 1898 the Tennessee Supreme Court issued a decision in *Prescott v. Town of Lennox* that later found favor with courts in other states.¹⁶ The town of Lennox (later “Lenox”) was incorporated in Shelby County by legislative act in 1896. Before its incorporation, the Eighteenth School District of Shelby

¹⁵ Tenn. Code Ann. § 49-6-403(a) requires the operation of a local school system in each county or combination of counties.

¹⁶ *Prescott v. Town of Lennox*, 47 S.W. 181 (Tenn. 1898).

County had acquired real estate and erected a school on property located within what eventually became the town of Lennox. The Eighteenth School District brought suit in order to have the rights of the parties to the real property and school established. As one could imagine, the town wanted the facility for use in operating its own municipal school while the Eighteenth School District of the County wanted to retain control of the facility.

The Tennessee Supreme Court held in favor of the Town of Lennox. A threshold principle that the Court relied on was that public property is not “owned” by a governmental instrumentality, but rather “. . . is only held in trust for the public. . . .” Expanding on this principle, the Court stated that when the Town of Lennox was incorporated, “. . . the *cestui que* trust . . . [became] . . . that public constituting the new corporation of Lennox.”¹⁷ The Court then further emphasized that principle as its touchstone:

Municipal corporations are called into being in the interest of the public, and, in order that they may better subserve their purpose, they have the right to create and control all of the agencies and appliances essential to the health, safety, and convenience of the communities constituting them. These “agencies and appliances, whether engine house, *school house*, hydrants, or sewers, are so distributed as to be of the most efficient service to the public. They are brought into existence to be so used. Now, when the territorial limits of a corporation are diminished by excision of a part of its territory, the power of control of the public agent over their appliances we think must be restricted to the newly-defined limits of the corporation, unless the legislature does what is unusual — confers a power upon its agents to act extraterritorially.”¹⁸

Importantly, the Court also noted that its ruling in the case and the theory upon which it was based could sometimes result in an “injustice” under the then-current law governing the formation of municipal corporations. But the Court reckoned that it was up to the legislature to deal with that possibility and proceeded to observe that in the private act of the legislature that permitted the incorporation of Lennox, no provision indicated that the Eighteenth School District would retain any control over the school building located in the annexed territory.¹⁹

As explained in more detail below, the Tennessee legislature did eventually address the matter of property transfer in the context of annexation some six decades after the *Town of Lennox* decision. For the

¹⁷ The term “*cestui que*” refers to the beneficiary of a trust. (See *Black’s Law Dictionary*, 6th Ed.)

¹⁸ *Town of Lennox*, 47 S.W. at 181 (citations omitted)(emphasis added).

¹⁹ *Id.*

moment, though, it is important to remember that the essential principles of *Lennox* — that public property is only held in trust, and that, absent contrary legislative direction, a transfer of property occurs when an annexing public entity exclusively assumes a role served by the public property in question — has remained a valid principle of Tennessee law to the present day.

Some forty years after the *Town of Lennox* decision, the Tennessee Supreme Court confronted the matter of debt assumption in a case involving a transfer of school facilities that occurred in a context other than annexation. In *Robertson v. Town of Englewood*,²⁰ the Tennessee Supreme Court confronted a situation in which a private act of the legislature amended the Charter of the Town of Englewood (located in McMinn County) so as to eliminate provisions that had declared the town to be a special school district. Thereafter, the McMinn County Board of Education, under the duty imposed upon it by the general law, assumed possession and control of the school facilities formerly operated by the town. Certain debt encumbered those facilities. An issue before the Court was whether McMinn County was obligated to pay the debt still owed on the facilities. Central to the Court's decision that the debt remained the obligation of the Town of Englewood was the fact that there was no statutory provision requiring otherwise:

Without statute, the rule of the common law would prevail, and by that rule the property is to be left where it is found and the debt upon the original debtor. There are decisions to the effect that upon abolition of a school district and the formation of a new district including its territory, the new district, as its successor, is liable for all debts of the old district and entitled to all of its property. The rule underlying the foregoing authorities rests upon the theory of succession or substitution of the new district to the rights and liabilities of the abolished district. That rule does not apply when the entity that acquired the property and created the obligation is left in existence. The rights and obligations of the town of Englewood cannot be adjusted by the judicial extension of the rule of implied liability, based upon the theory of succession, because the County of McMinn is not successor of the municipality.”²¹

Yet, after rejecting the argument that the debt should not be transferred based on the theory that the county was a successor to the contractual obligations of the debt instruments, the Court nevertheless went on to find that, “*By applying principles of equity to the situation, school funds of the County might be chargeable with the value of the school property taken over and used for the benefit of the public schools. . . .*”²² The Court's reference to an application of the “principles of equity” as a different theory (albeit not the one pleaded and,

²⁰ *Robertson v. Town of Englewood*, 123 S.W.2d 1090 (Tenn. 1939).

²¹ *Id.* at 1094 (citations omitted) (emphasis added).

²² *Id.* (emphasis added).

therefore, not the one before the Court) under which McMinn County *might* incur a financial obligation *may* have played a role in initiating legislative action some years after the decision.

The legislature later addressed both the issue of control of facilities and the issue of debt on the facilities in circumstances involving the transfer of administration of a municipal or special school district to a county school system, i.e. the same scenario the Court faced in *Town of Englewood*. Tenn. Code Ann. § 49-2-1002(d) states, *inter alia*, as follows:

The county board of education shall operate the schools of any town, city, or special school district transferred to them by authority of § 49-2-502 and this section as a coordinated part of the county school system, to the end that a unified and balanced school system may be maintained in the county.

Where there is any school indebtedness owed by the town, city or special school district at the time the transfer of administration is effectuated, the indebtedness shall remain the obligation of the town, city or special school district, and existing arrangements for the retirement of indebtedness shall be continued until the indebtedness is retired and paid in full, unless the county legislative body, by resolution adopted by a majority of the members, agrees to assume the school indebtedness owed by the town, city or special school district.

Again, without an extensive research of legislative history, it cannot be definitively said that the Court's reference to a possible "equitable" relief theory in *Town of Englewood* played a role in the genesis of this statutory provision. But without question, the statute captures and codifies the common law rule: Debt remains with the entity that originated it.

In 1955, the Tennessee legislature made a radical change in the method by which municipalities could annex adjoining territory. Previously, most changes in territorial limits of a municipality were effectuated by a private act of the legislature, as was the case in the *Town of Lennox* discussed above. After enactment of Chapter 112 of the Public Acts (now codified at Tenn. Code Ann. § 6-51-101, *et seq.*) (hereinafter the "annexation statute") in 1955, municipalities had the prerogative to annex adjoining territory upon their own initiative.

The annexation statute identifies two methods by which annexation can occur. One is "annexation by

ordinance” under which a municipality could ... “extend its corporate limits by annexation of such territory adjoining its existing boundaries as may be deemed necessary. . . .”²³ The other is the “annexation by referendum” through which a municipality “. . . may propose extension of its corporate limits by annexation of territory adjoining to its existing boundaries”²⁴ The annexation statute prescribes for both methods specific procedures for a public vote.²⁵ If annexation occurs as a result of either procedure, the statute requires the annexing municipality and any affected instrumentality of the State — including a “school district” — to attempt to reach an “. . . agreement in writing for allocation and *conveyance to the annexing municipality of any or all public functions, rights, duties, property, assets and liabilities* of such State instrumentality *that justice and reason may require in the circumstances.*”²⁶ If such an agreement cannot be reached between the parties, the annexation statute requires the parties to settle their differences by arbitration, with the arbitration award being subject to Chancery Court review.²⁷

As noted above, if Lakeland were to create a municipal school district, it would not be extending its corporate limits into territory adjoining its existing boundaries as contemplated by the annexation statute. Furthermore, the particular kinds of ballot verbiage and voting procedures set forth in the annexation statute do not apply to the creation of a municipal school district. As a result, the annexation statute has no direct application to the process of creating a municipal school district — at least under the present circumstances. Nor is the annexation statute’s method of resolving differences (i.e. arbitration) a method mandated for use in resolving any differences that may arise with Shelby County Schools over any “allocation of assets and liabilities” related to the transferred facilities. On the other hand, the statute does indicate that in the circumstance of annexation involving geographic expansion that the legislature intended that the “allocation of assets and liabilities” would be a matter of discussion between the parties, which (in the absence of agreement between the parties) could be arbitrated and ultimately reviewed in Chancery Court. The annexation statute then, if nothing else, has value to those who would argue that “equity” or “public policy” support the right of a county school system that turns over property to a newly formed municipal school system to seek “allocation” of assets and any debt that encumbers them.

But another Tennessee Supreme Court case issued in 1957, two years after the annexation statute was

²³ Tenn. Code Ann. § 6-51-102.

²⁴ Tenn. Code Ann. § 6-51-104.

²⁵ Tenn. Code Ann. §§ 6-51-102, 105.

²⁶ Tenn. Code Ann. § 6-51-111(a) (emphasis added).

²⁷ Tenn. Code Ann. § 6-51-111(b).

enacted, is also important to this discussion. In *Hamilton County v. City of Chattanooga*,²⁸ Hamilton County and its Board of Education sought a declaratory judgment in Chancery Court in Chattanooga seeking an interpretation of the annexation statute. Chattanooga had annexed a portion of Hamilton County known as Eastdale, which included Eastdale Elementary School, and also a portion of the county known as East Brainard, which included the Elbert Long School, which gave rise to the lawsuit. Hamilton County had incurred debt that was still owed on both schools. It was the position of Hamilton County and its Board of Education that the annexation statute applied, requiring an allocation of assets and liabilities related to the two schools. Chattanooga defended by claiming that because the County was “not an instrumentality of the State” that the statute did not apply. The Chancellor disagreed, determining that the County was indeed an instrumentality of the State, that the annexation statute applied, and that the statute required Chattanooga to attempt to settle its differences with the County Board of Education on an equitable apportionment of assets and liabilities. The Chancellor’s decree was appealed to the Tennessee Supreme Court where it was affirmed.

Of importance to this matter is that both the Chancery Court and the Supreme Court discussed the law as it existed before the annexation statute was enacted. Those discussions involved not only the *Town of Lennox* decision and its holding, but also the question of paying for property acquired through annexation. For its part, the Supreme Court observed as follows:

Prior to the present act under discussion, it was held in *Prescott v. Town of Lennox* (citation omitted) following a prior unreported decision, that valuable property acquired for school purposes became the property of the annexing city after said school district had been annexed. Questions of whether or not property held by a city in its private or proprietary capacity could be acquired by another annexing municipality and the question of whether or not property held by the annexed territory in its governmental capacity must be paid for by the annexing authority are all discussed in 37 *Am. Jur.*, 658, *sec.* 41, and 62 *C.J.S. Municipal Corporations* § 77, P. 185, *et seq.* Some of the cases make a distinction between property already paid for by the county or other annexed territory as distinguished from improvements as to which there remains an existing indebtedness.²⁹

The Supreme Court’s references to the *Town of Lennox* decision and the legal summaries “*Am. Jur.*”

²⁸ *Hamilton Cty. v. Chattanooga*, 310 S.W.2d 153 (Tenn. 1958).

²⁹ *Id.* at 154.

and "*C.J.S. Municipal Corporations*"³⁰ follow the more detailed discussion of these sources by the Chancery Court. For his part, the Chancellor had written as follows:

The general rule of law is that on annexation or consolidation of territory by a municipal corporation, the property of the annexed or consolidated territory ordinarily becomes that of the annexing or consolidating municipality. This rule will be found stated in *37 Am. Jur.*, 659, *Municipal Corporations* § 41. Able counsel for the City of Chattanooga also cites in his brief the statement of the same rule as found in *62 C.J.S.*, 185, *Municipal Corporations* § 77 which provides as follows:

A municipal corporation annexing territory retains title to the property which is held by such territory at the time of the annexation, and, in the absence of special circumstances or a statute to the contrary, it acquires title to the public property situated in the annexed territory without payment of compensation to the political corporation or subdivision from which the territory is taken. The legislature, however, may, and sometimes does, provide, on annexation, for an equitable division or apportionment of public property, or it provides for the payment by the annexing municipality to the political subdivision from which the territory is taken of a share of the value of the public property in such territory, or for the payment by the annexing municipality of an existing indebtedness on account of the property as a condition precedent of taking possession thereof.

It should be kept in mind that *there is a distinction between an annexing municipality acquiring property which has already been paid for and acquiring property on which there is an existing indebtedness*. In the present case, the Complainant, Hamilton County, according to the allegation of the bill, has issued bonds which are still unpaid in the amount of \$109,145.09 in part payment for the construction of the Elbert Long School building and \$81,668.66 in part payment for the erecting and equipping of the Eastdale School. On this theory, attention is again directed to *62 C.J.S.*, p. 186, *Municipal Corporations* § 77 cited by counsel for the Defendant, which states the general rule as follows:

³⁰ *Am. Jur.* is the shorthand citation for the legal summary entitled *American Jurisprudence*. *C.J.S.* is the shorthand citation for the legal summary entitled *Corpus Juris Secundum*.

*On principle, and apart from express statutory provision, a city annexing territory should not be required to compensate the county for public buildings or improvements situated in the annexed territory and already paid for, as distinguished from improvements as to which there is an existing indebtedness. Statutes departing from this principle will be strictly construed and confined in their application to cases clearly within their terms.*³¹

Notwithstanding the foregoing, as to the matter of debt on existing school facilities and any allocation of the responsibility to pay for it, there are Tennessee statutes and, indeed, State and Federal Constitutional provisions that lead to the conclusion that any debt on school facilities within Lakeland would remain the obligation of Shelby County Government. Ironically enough, these provisions were discussed at length by the Shelby County Attorney in a January 9, 2011 memorandum to the Shelby County Board of Commissioners on the subject of: "Question and Answer Summary of Legal Opinions Related to the Pending Dissolution of the Memphis City School District and Possible Conversion of the Shelby County School District to a Special School District." Question 22 and its answer dealt with the matter of debt service related to the construction of schools in the event the Shelby County School District was replaced with a special school district, or "SSD," to use the County Attorney's abbreviation. The question and its full answer including footnotes are instructive and worthy of full quotation:

22. If a SSD is established in Shelby County with taxing authority, what happens to the remaining debt service related to the construction of schools in the SCS District and in the annexation reserve areas of the City of Memphis, if any?

ANSWER: Shelby County Government has issued general obligation debt, so repayment of that debt would remain the responsibility of the County in the absence of any legislative authority to transfer this responsibility to the SSD.

ANALYSIS: Shelby County Government has issued general obligation debt for City and County schools pursuant to §§ 9-21-101, *et. seq.* and 49-3-1001, *et. seq.* and apportioned the proceeds from the bonds as required by §§ 9-21-129 and 49-3-1005, of the Tennessee Code. Since the

³¹ The Chancellor's Opinion is unpublished. (Emphasis added). A copy is attached as Appendix O.

bonds¹⁵ issued by the County for schools are general obligations issued for all schools in the County, including the MCS District, the County is required to levy a tax for repayment of the bonds on all taxable property within the County as required by Tenn. Code Ann. § 9-21-215.

There is no explicit statutory authority that relieves Shelby County from its obligation to repay these bonds upon creation of a SSD, and Tenn. Code Ann. § 9-21-121 specifically affirms the prohibition against a local government impairing the rights of its creditors, which includes bondholders. This is in addition to the provisions of Article I, § 20 of the Tennessee Constitution prohibiting the enactment of retrospective laws or laws impairing the obligations of contract, and the provisions of the U.S. Constitution prohibiting state and local governments from impairing contracts, including bondholder rights. See *United States Trust Co. of New York v. New Jersey, et. al.* 431 U.S. 1 (1977). If the private act creating the SSD provides for the assumption by the SSD of the County's school debt allocable to the SSD, the private act must also provide a comparable security or source for repaying the debt in order to avoid impairment of contract.

State law refers to a method for handling outstanding debt when a school system is abolished and merged with another system. The following statute is applicable to the outstanding debt of the City of Memphis issued for the MCS District, but not the County school bonds:¹⁶

Where there is any school indebtedness owned by the town, city, or special school district at the time the transfer of administration is effectuated, the indebtedness shall remain the obligation of the town, city or special school district, and existing arrangements for the retirement of the indebtedness shall be continued until the indebtedness is retired and paid in full, unless the county legislative body, by resolution adopted by the majority of the members, agrees to assume the school indebtedness owed by the town, city or special school district. Tenn. Code Ann. § 49-2-1002(d).

Accordingly, indebtedness issued by the City of Memphis for the MCS District remains the obligation of the City after any such school merger, unless the County Commission adopts a resolution assuming such debt.

¹⁵ Note that the County's Special General Obligation School Bonds, 2003 Series A were issued for schools located outside of the City of Memphis and, pursuant to § 49-3-1005(b) of the Tennessee Code, such bonds are payable solely from taxes levied on taxable property located outside the boundaries of the MCS District, which constitutes the area of the County outside of the boundaries of the City of Memphis.

¹⁶ The Tennessee Attorney General has stated, and this office concurs, that the provisions of Tenn. Code Ann. § 49-2-1002(a)(1) do not authorize the MCS Board to surrender its Charter pursuant to this statute, because the MCS District is not a school system "maintained" by a municipality. See Op. Tenn. Atty. Gen. No. 03-037 (Apr. 2, 2003). While the Attorney General in this opinion stated that § 49-2-1002 does not apply to the MCS District, it is the opinion of this office that several subsections of this statute do apply, as they specifically reference SSDs transferring authority to the county pursuant to Tenn. Code Ann. § 49-2-502, which is the authority upon which the current MCS Board Charter surrender has been initiated. These subsections, Tenn. Code Ann. § 49-2-1002(b), (c), and (d), respectively, deal with the ability of the abolished district to devote funds for operation and maintenance of the county school system, the requirement that the county school board perform the same duties with respect to the transferred SSD as they do with respect to county schools, and the transfer and use of funds and indebtedness.

Obviously, the facts addressed in the County Attorney's question and answer are different from those under examination here. The assumed facts of the question were that the Shelby County School System was replaced by a special school district. Nevertheless, the answer confirms that a principle of common law developed and/or explained in *Town of Lennox* and *Town of Englewood* and other cases is buttressed by statutory provisions, and, indeed, by provisions in the Tennessee and U.S. Constitutions. In sum, the referenced statutory and constitutional provisions prohibit a governmental entity from taking action that impairs contractual rights, including the rights of debt holders. A transfer of debt by a county to a municipality would constitute such an impairment, especially in the absence of legislation that provided for: a) an assumption of debt so as to countermand an application of the common law; and b) establishment of comparable security or a source of repayment sufficient to avoid impairing the rights of the debt holders.

While Public Chapter 1 reactivated the right of a municipality to create a municipal school district under certain conditions, it did not address the question of whether the facilities of the county school system would transfer to the municipality in which they were located if that municipality acted to create a school system. Nor did Public Chapter 1 address the question of whether the municipality (assuming it took control

over the county schools within its boundaries) would have to reimburse the county for the value of the facilities and/or assume responsibility for debt encumbering the facilities.

The very fact that the legislature failed to expressly address the various issues regarding the transfer of facilities and the fact that the annexation statute (because it singularly addresses territorial expansion through specified procedures) is not directly applicable means that the cases discussing the common law as it existed — and still exists — outside the annexation statute, are the best source of initial guidance regarding these issues. Based on those cases and their underlying theory that the school facility within the boundaries of Lakeland is only “held in trust” by Shelby County Schools, if Lakeland were to form a municipal school district then, using the language from *Town of Lennox*, “. . . the *cestui que* trust would become the public, constituting the new . . .” school district. That is to say the residents of Lakeland whom the Lakeland municipal school district would serve would become the beneficiaries for whom the trust exists. Accordingly, the annexation or overtaking of services — namely the municipal school district’s assumption of operating the school within the boundaries of Lakeland — requires a transfer to the new school district of the existing facility within its boundaries without any obligation on the part of the new district to purchase the facility.

There is another argument that supports the proposition that the Shelby County School System facility located within Lakeland would transfer to a Lakeland municipal school district. As indicated, Public Chapter 1 revived the power of municipalities to create municipal school districts when there is a one hundred percent (100%) or more increase in the student population in the county school system in which students living within the municipality are enrolled. Thus, the very essence of Public Chapter 1 is to present a municipality with the *option* of choosing not to be served by such a massively enlarged system and instead creating its own smaller, localized school system. If the county school system’s facilities located within the boundaries of a municipality did not come under the control of the newly created municipal school system — thus providing the system with facilities within which to exist and operate — it would frustrate the whole purpose of Public Chapter 1.

While cases applying common law principles in annexation scenarios support the proposition that a newly created municipal school district obtains control over a facility that the county school system operates within the municipality without any obligation to purchase debt-free facilities, there is arguably less clarity when it comes to facilities on which debt still exists. It can be argued — and strongly so — that because Public Chapter 1 contains no requirement that debt (if owed on the facilities) be assumed, the strictest interpretation of common law prevails. In a word, without a legislative directive otherwise there would be no obligation to assume an “allocation” of any debt that may exist. This argument would be fortified by the fact that Shelby County, the entity that incurred the debt, would still exist and thus the newly formed municipal school system would not have “successor” liability for the debt. Of course, this was the very rationale of the Tennessee

Supreme Court in the *Town of Englewood* case. Strengthening the argument further still is Tenn. Code Ann. § 49-3-1005(a), which specifically identifies the county as the entity responsible for school bond debt:

Upon their issuance, these school bonds are binding obligations and debts *upon the county*, and the county legislative body of the county shall levy annually a tax on all the taxable property of the county for the purpose of paying interest on the bonds as it comes due and to create a sinking fund with which to retire and pay off the bonds when they mature.³²

With school bond debt being identified as county debt, the statutory and constitutional provisions that prohibit a governmental entity (in this case Shelby County) from taking action that would impair the rights of debt holders (in this case, holders of Shelby County School bonds) are barriers to the transfer of that debt. Absent specific statutory authorization for transferring such debt and provision for comparable security to support the debt in connection with a transfer, the statutory and constitutional provisions in question alone appear to prohibit a debt transfer to Lakeland — just as in the opinion of the Shelby County Attorney they would have prevented a transfer of Shelby County debt to a special school district had one been formed to replace the Shelby County School System. But Tenn. Code Ann. § 49-2-1002(d) — the statute addressing the transfer of property when a municipal or special school district transfers the administration of its schools to a county school system — provides even more support, albeit by analogy. That statute clearly states that, under those circumstances, the debt remains the obligation of the municipality, unless the county legislative body *expressly* assumes it.

Although the cases reviewed herein also contain verbiage hinting at another possible approach, it is simply the other side of the same coin. That view is that in the absence of statutory direction regarding the assumption of debt, “equity” should prevail — and it demands an allocation of debt. As noted before, the annexation statute’s verbiage may provide a public policy argument in this regard. But as to that statute, it must be remembered that it does not mandate that any allocation of liabilities occur or that liabilities be assumed at all. The statute merely requires the parties to “attempt to agree” on this and other matters as “justice and reason may require.”³³

As to this point, it is important to recall the result of an accounting analysis that Southern Educational Strategies, LLC commissioned. That analysis, conducted by Watkins Uiberall PLLC, Certified Public Accountants, consisted of a CPA review of the Shelby County School Board of Education's audited annual financial

³² Tenn. Code Ann. § 49-3-1005(a) (emphasis added).

³³ Tenn. Code Ann. § 6-51-111(a); see *Knoxville Util. Bd. v. Lenoir City Util. Bd.*, 943 S.W.2d 879 (Tenn. Ct. App. 1996).

statements for the fiscal year ending June 30, 1965, through the fiscal year ending June 30, 2010. Despite that during this period Memphis annexed property and forty-four (44) schools in Shelby County that the Shelby County School System operated, the accounting analysis found that Memphis City Schools made no direct payments to Shelby County Schools for any of the annexed property or school facilities, furniture, fixtures, or equipment. (Details of this analysis are found in another section of the study.)

Of course there is a final fundamental point that can be made in response to any demand regarding assumption of debt, especially based on some notion of “equity.” Residents of Lakeland are also Shelby County residents and as such they have historically paid Shelby County property tax and will continue do so in the future. In the above quoted answer that the County Attorney provided to Question 25 in the January 9, 2011 Memorandum to the County Commissioners, the fact that the bonds that Shelby County issued constitute general obligations for all schools in the county (including, historically, schools in the Memphis City School System) was very well explained. Thus, clearly a portion of the County property tax that Lakeland residents have paid in the past and will pay in the future will be used to retire that general obligation. In sum, residents of Lakeland have already been paying on a proportional basis for Shelby County school facilities within Lakeland (plus paying their share for schools constructed in the City of Memphis as well) and through their Shelby County property tax payments will continue to do so in the future. Apart from every other reason, any demand for assumption of debt would ignore this reality — and *inequitably* so.

Absent some intervening clarifying action by the General Assembly, disputed issues regarding the terms under which facilities would be transferred will likely be resolved in one of two ways — either through court action (likely a Declaratory Judgment action under Rule 57 of the Tennessee Rules of Civil Procedure through which a Chancery Court would determine the rights of the parties) or through voluntary *ad hoc* negotiations between the parties, that is to say, negotiations not required by law. In either setting, it is believed that the stronger argument supports the right of a Lakeland municipal school district to receive transfer and control of the school facilities now located within its boundaries and to have that transfer occur without any requirement to purchase the facilities or assume debt obligations. But as for any debt that may encumber the facilities, a demand for assumption of some or all of such debt may occur and may be based on “public policy” or “principles of equity” — however thin the argument.

E. Providing the Required Financial Support to the School System

Section (5) of State Board of Education Rule 0520-1-8-.01 states as follows:

No city school system shall be created or reactivated for the purpose of operating a system of public schools unless such school system shall:

- (5) Spend each fiscal year for the current operation of its public schools an amount of money in addition to the amount required to be raised by the county at least equal to that which a fifteen cents (\$0.15) tax levy on each One Hundred Dollars (\$100.00) of taxable property for the current year in said city school district would produce if the same were all collected.

This requirement is drawn from several Code provisions. Tenn. Code Ann. § 49-2-601(b)(3), the enabling statute for Rule 0520-1-8-.01, requires a municipality creating a school district to provide funding that is “sufficient to provide adequate educational opportunities for their children.” Also, the specific reference made in Section (5) of this Rule to a required funding amount derived from a tax levy on each \$100.00 of taxable property is drawn from Tenn. Code Ann. § 49-2-401. That Code Section empowers a municipality to submit for a vote a levy and collection of a school tax on every \$100.00 of taxable property in the municipality. The tax can be levied if a super majority of two-thirds of voters vote for the tax. But neither Tenn. Code Ann. § 49-2-401 nor State Board of Education Rule 0520-1-8-.01 requires that the municipality fund a municipal school system through property taxes. Section (5) of the Rule merely indicates that a municipal school district must *spend* each fiscal year — above and beyond funds it may receive from the county — an amount of money “at least equal to” the funds that would be collected via a \$0.15 tax levy on each \$100.00 of taxable property.

Under Tenn. Code Ann. § 67-6-701 *et seq.*, municipalities may impose a local option sales tax to the extent the county has not imposed or does not in the future impose a sales tax higher than the 2.75% maximum. Presently, Shelby County has imposed a local option sales tax of 2.25%. Thus, there is presently at least leeway for Lakeland to levy an additional sales tax of 0.5%. But, again, this tax must be approved in an election by a majority of voters. If voters in the City of Lakeland should choose to approve a 0.5% increase in the local option sales tax rate and if the local option sales tax rate in Shelby County remains at its current level, the City of Lakeland will retain one hundred percent (100%) of the additional sales tax revenue collected in Lakeland.³⁴ (The potential monetary impact of this option is described in the fiscal section of the study.)

A municipality that chooses to fund its schools through such a local option sales tax must consider not only any delays in implementing the tax, but also the possibility of eventually losing the opportunity to directly

³⁴ Tenn. Code Ann. § 67-6-712 provides that a **county** must distribute one-half (1/2) of the proceeds of funds collected through a local option sales tax in the same manner as the county property tax for school purposes is distributed. *See also* Op. Tenn. Atty. Gen. 95-055 (May 23, 1995).

collect the local option sales tax at all. Tenn. Code Ann. § 67-6-703(b) provides as follows:

If an ordinance levying the tax authorized by this part is adopted by a city or town prior to adoption of the tax by the county in which the city or town is located, the effectiveness of the ordinance shall be suspended for a period of forty (40) days beyond the date on which it would otherwise be effective under the charter of the city or town. If during this forty-day period, the county legislative body adopts a resolution to levy the tax at least equal to the rate provided in such ordinance, the effectiveness of the ordinance shall be further suspended until it is determined whether the county tax is to be operative, as provided in § 67-6-706. If the county tax becomes operative by approval of the voters as provided in § 67-6-706, the ordinance shall be null and void, but if the county tax does not become operative, the ordinance shall become effective on the same date that the county tax is determined to be nonoperative, and the election required by § 67-6-706 shall be held. After initial adoption of the tax by a county or a city or town therein, the tax rate may be increased by a city, town or county under the same procedure. If the tax levied by a county legislative body is finally determined to be nonoperative, such action shall not preclude subsequent action by the county to adopt the tax at a rate at least equal to the city or town tax rate, in which event the city or town tax shall cease to be effective provided, that the city or town shall receive from the county tax the same amounts as would have been received from the city or town tax until the end of the current fiscal year of the city or town.

As to the possibilities presented by this Code section, it must be remembered that under Tenn. Code Ann. § 67-6-712(a), fifty percent (50%) of the funds that a county local option sales tax produces must be used to fund schools. Moreover, those funds must be allocated to all school districts in the county. This means that if Shelby County were to increase its sales tax, a proportionate amount of that increase would inure to Lakeland in any event.

Another possible delay in collecting a local option sales tax is found in Tenn. Code Ann. § 67-6-716. Under that statute, beginning July 1, 2013, any voter-approved local option sales tax would not become effective until the first day of a calendar quarter and no earlier than sixty-one (61) days after the Commissioner of Revenue has notified those who will be affected by the sales tax.

Theoretically, there may be other taxing options available to a municipality to raise the funds that Section (5) of State Board of Education Rule 0520-1-8-.01 requires. But a limitation on any funding options is Tenn. Code Ann. § 49-3-315(a), which prohibits a municipality from imposing more than one form of tax that is specifically designated for the funding of school operations and maintenance:

For each LEA, there shall be levied for current operations and maintenance not more than one (1) school tax for all grades included in the LEA

The provision requires that, if one such school tax is levied, the legislative body has no option other than to appropriate the revenue received from that tax for the school district's use. But this provision does not prohibit a local legislative body in the course of its annual budgeting process from voluntarily allocating to a school district revenues obtained from other taxes.

Should Lakeland form a municipal school district it would participate in the Tennessee Basic Education Program (BEP). The BEP is a rather complex program, and a full discussion of it is beyond the scope of this analysis.³⁵ Suffice it to say that under the BEP, municipalities with school districts receive a certain amount of funding from the State toward the total costs to be expended for instructional and non-instructional purposes. There is a requirement in Tenn. Code Ann. § 49-3-356, though, that any municipality receiving BEP funds must provide the balance required for the total funding needed for these purposes. Such requirement may be met using funding from all available sources, including but not limited to the funds shared with the municipal district by Shelby County. The Code section further requires the municipality to appropriate sufficient funds to fund the municipality's share of the BEP in a budget approved by its legislative body. BEP funding from the State is distributed directly to the municipality.

F. Conducting the Required Referendum and Providing Information Requested

Section (6) of State Board of Education Rule 0520-1-8-.01 provides as follows:

No city school system shall be created or reactivated for the purpose of operating a system of public schools unless such school system shall:

- (6) Furnish all information as requested by the State Commissioner of Education on behalf of the State Board of Education relating to the creation or reactivation of a new school system, such as supporting statistical and fiscal data; and furnish certified results of a referendum election indicating the willingness of the local people to meet the standards of adequacy as here in above set forth and to provide the necessary local funds to do so, after the new school system's share of

³⁵ *But see* §§ 49-3-307, 351, and 356.

the State and other school funds has first been applied.

This final section of Rule 0520-1-8-.01 involves a requirement that a municipality provide documentation demonstrating that requirements in the preceding five sections have been complied with. But it is important to first discuss the referendum described in this section, the results of which must also be documented. As may have been noticed regarding some of the requirements set forth in Rule 0520-1-8-.01, there is scant mention of them in the enabling statute, Tenn. Code Ann. § 49-2-106, titled “Creation and Expansion of City or Special School Districts.” But this is not the case with respect to the referendum.

Tenn. Code Ann. § 49-2-106(b)(3) states:

In establishing the standards, the state board is authorized and directed to take into consideration such factors as:

- (3) the expressed willingness of the people of the city or special school district, as indicated by a majority of its legal voters in a referendum, to raise local funds, which, together with school funds received from the state and other sources, shall be sufficient to provide adequate educational opportunities for their children.

In the analysis of Section (5) of Rule 0520-1-8-.01 above, at least one aspect of the “vote” contemplated in Section (6) was previously discussed. Remember that the funding for the spending commitment required in Section (5) can be provided by levying a property tax or a local option sales tax, but not both.³⁶ Levying a property tax requires a referendum vote in which two-thirds of voters vote in favor of the tax.³⁷ Also, a referendum vote must occur in the case of a local sales tax, while adopting this type of tax requires only a simple majority of votes.³⁸ Furthermore, the portion of Section (6) of this Rule dealing with the referendum clearly contemplates a ballot containing a proposition for the adoption of one or the other of these forms of

³⁶ Tenn. Code Ann. § 49-3-315(a).

³⁷ Tenn. Code Ann. § 49-2-401(b).

³⁸ Tenn. Code Ann. § 67-6-706(a).

taxation. But as Section (6) also makes clear, the ballot would actually involve more. Section (6) requires that the certified results of the referendum to be submitted to the State Commissioner of Education “. . . indicating *the willingness of the local people to meet the standards of adequacy . . . set forth . . . in the Rule . . .*” in addition to “. . . the willingness of the local people to provide the necessary local funds to do so”³⁹ In sum, the referendum ballot would have to be carefully worded so as to obtain — in addition to approval for any single form of “new” taxation — approval of the actions necessary to meet the “standards of adequacy” contained in Rule 0520-1-8-.01. For example, this would likely include obtaining approval for forming a municipal school district, establishing a board of education, employing a superintendent and teachers, and providing school facilities.

As noted earlier, Section (6) also requires the submission of documentation to the State Commissioner of Education. Precisely what information would be required for submission cannot be stated with certainty at this time. For one thing, the section refers to “. . . all information as requested by the State Commissioner of Education . . . relating to the creation . . . of the new school system.”⁴⁰ The three examples appearing in section (6) are:

- 1) Statistical data (presumably that which may be necessary to confirm the required scholastic population described in section (1) of the Rule, or for a comparison of the annual salaries of a superintendent and teachers and the “average training” for teachers which are the subjects of sections (2) and (3) of the Rule);
- 2) Fiscal data (presumably information to confirm the adequacy of funding for school operations); and
- 3) The certified results of the referendum discussed above.

What all of this means is that if Lakeland determines to move forward with an effort to create a municipal school district, there is much to be done in order for the effort to culminate on the beginning day of the 2013–2014 school year. First, a timetable for the required referendum must be developed taking into account the time needed to carefully draft the ballot proposition and for the County Election Commission to schedule, conduct, and certify the results. The initial referendum would then have to be followed by the

³⁹ Rule 0520-1-8-.01(6) (emphasis added).

⁴⁰ Rule 0520-1-8-.01(6) (emphasis added).

election of a school board, which may occur in connection with a previously scheduled election or one specially called. A timetable for that election would have to account for all necessary administrative matters leading up to it, including filing any nominating petitions.

In addition to holding the required referendum and election, creating a new school district involves: (1) employing a superintendent, teachers, administrators, and support staff; (2) a final disposition regarding school facilities; and (3) adopting a significant number of policies and procedures, as well as many other matters well beyond the scope of this analysis. But perhaps the most crucial consideration is the timing of when the Commissioner of Education adjusts the average daily membership (ADM) for purposes of apportioning and distributing state education funds. In a word, a Lakeland municipal school district must be ready to submit ADM data to the Commissioner before July 1, 2013.

III. Additional Statutory Provisions

This analysis has by no means been intended to be an exhaustive treatment of all sections of the Code or regulatory requirements regarding the creation of a municipal school district and certainly not those governing the ongoing operation of such a system. To be clear, the 2011 edition of *Tennessee Education Laws* — the compilation of provisions applicable to education appearing in the Tennessee Code published by LexisNexis — contains over 800 pages, not including the Table of Contents and Index. Instead, the focus herein has been on the statutes, regulations, and common law provisions that are fundamental to creating a municipal school district. Nevertheless, a glimpse of the fuller dimensions of the task at hand (should Lakeland choose to undertake it) is in order.

For example, there are twenty or more Tennessee Code sections addressing policies that a school board is required to adopt, some of which are:

- Tenn. Code Ann. § 49-1-104 addressing minimum class size;
- Tenn. Code Ann. § 49-2-305 addressing parental involvement;
- Tenn. Code Ann. § 49-2-604 concerning school support organizations;
- Tenn. Code Ann. § 49-3-310 dealing with textbooks;
- Tenn. Code Ann. § 49-5-711 dealing with personnel and professional leave;
- Tenn. Code Ann. § 49-6-405 addressing promotion and graduation;
- Tenn. Code Ann. § 49-6-1601 concerning reports of child abuse;
- Tenn. Code Ann. § 49-6-3401 addressing suspension and expulsion.

Under Tenn. Code Ann. § 50-6-601(1)(B)(6), a newly formed board of education must decide whether

to opt into the state workers' compensation program. The board should also be prepared to investigate whether there are any OSHA, EPA, or building code issues that would affect the school facility, control of which is expected to be transferred by Shelby County Schools. The board must also ensure that special services, such as medical care or assistive technology, are in place to immediately implement Individual Education and Section 504 Plans developed in compliance with the Individuals with Disabilities Education Improvement Act and the Rehabilitation Act of 1973, along with their implementing regulations and parallel state requirements.

Administrators, especially those in human resources, must be prepared to comply with both state and federal statutes and their implementing regulations that provide employee protections in the workplace. Such laws include, but are not limited to, the Americans with Disabilities Act, the Fair Labor Standards Act, the Family Medical Leave Act, the Uniform Services Employment and Reemployment Act, the Genetic Information Non-Discrimination Act, and other federal and state laws prohibiting discrimination in employment based upon age, race, religion, national origin, and sex.

There are several additional Code provisions that may be of considerable benefit to a newly formed Lakeland municipal school system and thus merit final mention. These address joint or cooperative arrangements permitted between two or more school districts. Tenn. Code Ann. § 7-51-908, for instance, consists of only one succinct, yet seemingly open-ended, sentence:

Municipalities, counties, or school systems may contract among themselves for matters concerning education.

On the other hand, Tenn. Code Ann. § 49-2-1101(a), already discussed herein above, is more precise in purpose and direction:

The boards of education of any two (2) or more school systems are authorized and empowered to establish, maintain and operate a public school or schools jointly by entering into contracts for that purpose.

As indicated previously, schools established, maintained, and operated under such a contract are considered as integral parts of each municipal, county, or special school districts that are parties to the contract.⁴¹ The administration of schools established, maintained, and operated under such a contract may be placed under the control of the board of education of the county, city, or special school district where the school is located.

⁴¹ Tenn. Code Ann. § 49-2-1102.

Alternatively, the school may be placed under a “board of control.”⁴² The Attorney General and the Commissioner of Education are charged with the responsibility of rendering advice and assistance in the preparation, execution, and interpretation of contracts establishing such a joint enterprise.⁴³ Obviously, should Lakeland proceed with the creation of a municipal school district, entering into such an agreement with one or more other boards of education would be necessary. (Such cooperative agreements are discussed elsewhere in the study.)

Tenn. Code Ann. § 49-2-109 is yet another example of a statute providing for joint action aimed at a specific purpose. The provision states, *inter alia*:

- (a)(1) The county board of education has the power to make contracts with the proper authorities of private schools or with city or special school district boards of education whereby the county public elementary and high schools may be taught in the private or city schools.
 - (A) Such public elementary and high school branches shall be taught free of charge to all pupils of the county entitled thereto.
 - (B) The contract may provide that:
 - (i) The school shall be administered by either the city, special school district or county board of education upon the condition that the board charged with administration of the school shall employ duly licensed teachers, comply with other state laws pertaining to education and not interfere with the powers devolved upon the commissioner of education in connection with the county public elementary and high schools. . . .

Finally, the Educational Cooperation Act, found at Tenn. Code Ann. § 49-2-1301, *et seq.*, provides a very structured form of cooperative action. On first encounter, this statute presents numerous requirements and bureaucratic hurdles. But the Act does present a school district many options on how it may operate more efficiently and economically, not only from inception, but throughout the course of ongoing operations as time

⁴² Tenn. Code Ann. § 49-2-1103(a).

⁴³ Tenn. Code Ann. § 49-2-1104.

progresses. Tenn. Code Ann. § 49-2-1302 states the purpose of the Educational Cooperation Act in a single sentence:

It is the purpose of this part to permit local governmental units and boards of education the most efficient use of their powers by enabling them to cooperate with other localities on a basis of mutual advantage and to thereby provide educational services and facilities in a manner that will accord best with geographic, economic, population and other factors influencing the needs and development of local educational facilities and services.

Suffice it to say, the Educational Cooperation Act would present a Lakeland municipal school board and/or the municipality itself an opportunity to enter into contracts with other school boards and governmental entities to establish joint or cooperative efforts in connection with any number of matters, the full range of which the Act does not attempt to define. By way of example only, some of the efforts may involve a joint operation — or a “cooperative” to use another term appearing in the statute — for school bus services, or an alternative school, or janitorial and grounds maintenance services, or for the purchase of equipment and supplies, or for other needs, services, and material in circumstances where economies of scale can be achieved. Indeed, the Act goes so far as to permit joint operation of not only school facilities, but even the school systems in their entirety. A joint board of control may be formed to oversee joint operations or provision of services, though one is not required. What is required is that a contract must be established between the parties, the terms of which the Act addresses. The Attorney General and the Commissioner of Education must also approve any such contract before it may be entered into. Finally, the Act provides for the Comptroller of the Treasury’s financial audit of any joint undertaking.

History of Past Practice Regarding School Facility Transfer in Shelby County

Throughout the 20th Century and during the first decade of the 21st Century, the corporate boundaries of the City of Memphis have expanded. In almost every expansion, the existing Shelby County School District school facilities, furniture, fixtures, and equipment located within each Memphis expansion area were transferred to the special school district known as the Memphis City Schools. At some point following each expansion, the Memphis City Schools assumed the responsibility of education for the K-12 grade students who were formerly served by the Shelby County Schools. The evidence examined for this study confirms that since the 1960's, at least 44 of these facilities, plus the furniture, fixtures, and equipment held in trust for the students were transferred by Shelby County Schools to the special school district at no direct cost to the Memphis City Schools.

It is important to note that all school facilities constructed by the Shelby County School District have been financed with general obligation bonds or general obligation school bonds issued by the Shelby County Board of Commissioners or its predecessor, the Shelby County Quarterly Court (Arlington High School is the sole exception, and it was funded with "rural school bonds" which are paid off only by residents who live outside of Memphis). Therefore, all of the current Shelby County School District facilities are "owned" by all the residents of Shelby County, including the residents of the seven municipalities located within Shelby County. In addition, most of the schools constructed within the City of Memphis since 1959 are also "owned" by all of the residents of Shelby County. Those schools also were financed by all Shelby County taxpayers as described below.

Since 1959, whenever capital outlay bonds were sold and funds were provided to the Shelby County Board of Education, the Board of Education of the Memphis City Schools also received a proportional share of these revenues. In recent years, Memphis City Schools received as much \$2.70 for each \$1.00 provided for the Shelby County Schools. For example, if \$50 million in capital funding was provided for Shelby County Schools, then Memphis City Schools also received \$135 million for school construction.

As a part of this feasibility study, Southern Educational Strategies, LLC engaged the services of Watkins Uiberall PLLC, Certified Public Accountants, to determine, from an on-site analysis of the audited annual financial statements of the Shelby County Board of Education, if any direct revenue was received from any payments that were made by the Memphis City Schools Board of Education to the Shelby County Board of Education for any school facilities, land, furniture, fixtures, or equipment acquired by the Memphis City Schools from fiscal years 1965 to 2010. During this period, school board meeting minutes and other records indicate that at least 44 individual school facilities were

transferred from Shelby County Schools to the Memphis City Schools. **No evidence of any direct payment for these school facilities was found by this independent accounting firm’s review of financial records.** The only type of “payment” by Memphis City Schools for any school facilities as referenced in the audited annual financial statements concerns agreements by Memphis City Schools to waive a portion of its share of future school construction bonds that might be issued by the Shelby County Board of Commissioners. **It was beyond the scope of this feasibility study to determine if those bond waiver agreements were actually implemented.**

Finally, it is important to note that the transfer procedures for the last two Shelby County Schools facilities that were transferred to the Memphis City Schools are referenced in a document titled *Joint Cooperation and Settlement Agreement between the Shelby County Board of Education and the Board of Education of the Memphis City Schools* dated August 15, 2005. **This agreement specified that “There will be no compensation to Shelby County Schools for the transfer of Kate Bond Elementary School and Chimneyrock Elementary School to the City School Board.”**

Watkins Uiberall, PLLC, Certified Public Accountants examined the audited annual financial statements of the Shelby County Board of Education for the fiscal years ended June 30, 1965 to June 30, 2010 to determine 1) amounts of revenue, if any, directly received by the Shelby County Board of Education from the Memphis City Schools’ Board of Education as payments for school facilities including land, furniture, fixtures, and equipment) acquired by Memphis City Schools through annexation and 2) any footnotes, if any, noted in these same financial statements that reference agreements by the Memphis City Schools’ Board of Education to waive its Average Daily Attendance (ADA) share of potential revenue from future school construction bonds that might be issued by the Shelby County Board of Commissioners, in exchange that the City would not be required to compensate the County for the cost of schools annexed in the future. The full report from the accounting firm of Watkins Uiberall, PLLC follows.

Watkins Uiberall, PLLC Report



Watkins Uiberall, PLLC
Certified Public Accountants & Financial Advisors
Independent Member of BKR International

1861 Aaron Brenner Drive • Suite 300
Memphis, Tennessee 38120
901.761.2720 • Fax: 901.883.1120

210 East Main Street • Suite 2C
Tupelo, Mississippi 38804
662.269.4014 • Fax: 662.269.4015

www.wu388.com

INDEPENDENT ACCOUNTANT'S REPORT ON APPLYING AGREED-UPON PROCEDURES

To the Management of
Southern Educational Strategies, LLC

We have performed the procedures enumerated in Schedule A, which were agreed to by Southern Educational Strategies, LLC solely to assist Southern Educational Strategies, LLC in feasibility studies regarding the creation of municipal school districts in Shelby County. This agreed-upon procedures engagement was conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants. The sufficiency of these procedures is solely the responsibility of Southern Educational Strategies, LLC. Consequently, we make no representation regarding the sufficiency of the procedures described in Schedule A, either for the purpose for which this report has been requested or for any other purpose.

We were not engaged to, and did not, conduct an audit, the objective of which would be the expression of an opinion on the accounting records. Accordingly, we do not express such an opinion. Had we performed additional procedures, other matters might have come to our attention that would have been reported to you.

This report is intended solely for the information and use of Southern Educational Strategies, LLC and is not intended to be and should not be used by anyone other than this specified party.

Watkins Uiberall, PLLC

Memphis, TN
December 6, 2011

SCHEDULE A – DESCRIPTION OF PROCEDURES AND FINDINGS

We applied the agreed-upon procedures of examining the audited annual financial statements of the Shelby County Board of Education for the fiscal years ended June 30, 1965 to June 30, 2010 to determine 1) amounts of revenue, if any, directly received by the Shelby County Board of Education from the Memphis City Schools' Board of Education as payments for school facilities (including land, furniture, fixtures, and equipment) acquired by Memphis City Schools through annexation and 2) any footnotes, if any, noted in these same financial statements that reference agreements by the Memphis City Schools' Board of Education to waive its Average Daily Attendance (ADA) share of potential revenue from future school construction bonds that might be issued by the Shelby County Board of Commissioners, in exchange that the City would not be required to compensate the County for the cost of schools annexed in the future.

The following are our findings as a result of those procedures described above:

Fiscal year ended	Direct Revenue Received
6/30/1965	\$0.00
6/30/1966	\$0.00
6/30/1967	\$0.00
6/30/1968	\$0.00
6/30/1969	\$0.00
6/30/1970	\$0.00
6/30/1971	\$0.00
6/30/1972	\$0.00
6/30/1973	\$0.00
6/30/1974	\$0.00
6/30/1975	\$0.00
6/30/1976	\$0.00
6/30/1977	\$0.00
6/30/1978	\$0.00
6/30/1979	\$0.00
6/30/1980	\$0.00
6/30/1981	\$0.00
6/30/1982	\$0.00
6/30/1983	\$0.00
6/30/1984	\$0.00
6/30/1985	\$0.00
6/30/1986	\$0.00
6/30/1987	\$0.00
6/30/1988	\$0.00
6/30/1989	\$0.00

See independent accountant's report.

Southern Educational Strategies, LLC

SCHEDULE A – DESCRIPTION OF PROCEDURES AND FINDINGS (Continued)

Fiscal year ended	Direct Revenue Received
6/30/1990	\$0.00
6/30/1991	\$0.00
6/30/1992	\$0.00
6/30/1993	\$0.00
6/30/1994	\$0.00
6/30/1995	\$0.00
6/30/1996	\$0.00
6/30/1997	\$0.00
6/30/1998	\$0.00
6/30/1999	\$0.00
6/30/2000	\$0.00
6/30/2001	\$0.00
6/30/2002	\$0.00
6/30/2003	\$0.00
6/30/2004	\$0.00
6/30/2005	\$0.00
6/30/2006	\$0.00
6/30/2007	\$0.00
6/30/2008	\$0.00
6/30/2009	\$0.00
6/30/2010	\$0.00
Total	\$0.00

For the year ended June 30, 1974, the following footnote was disclosed:

"The County Board of Education and the City Board of Education have agreed upon a settlement of compensation for transferring deeds of various schools in areas annexed by the city during 1968, 1969, 1971, and 1972. The agreement dated June 4, 1974 states that Shelby County or the Shelby County Board of Education shall have the right to issue County School Bonds or to use any other local funds, subject to Average Daily Attendance distribution as required by state laws, for capital improvement purposes without the necessity of making an average daily attendance distribution to the City Board of Education other than as a credit against this settlement until such credit shall accumulate to \$8,213,768.01.

This settlement is intended to supersede and supplement the arbitration award presently before the Chancery Court of Shelby County, Tennessee."

For the year ended June 30, 1975, the following footnote was disclosed:

"The County Board of Education and the City Board of Education have agreed upon a settlement of compensation for transferring deeds of various schools in areas annexed by

SCHEDULE A – DESCRIPTION OF PROCEDURES AND FINDINGS (Continued)

the city during 1968, 1969, 1971, and 1972. The agreement dated June 4, 1974 states that Shelby County or the Shelby County Board of Education shall have the right to issue County School Bonds or to use any other local funds, subject to Average Daily Attendance distribution as required by state laws, for capital improvement purposes without the necessity of making an average daily attendance distribution to the City Board of Education other than as a credit against this settlement until such credit shall accumulate to \$8,213,768.01."

For the year ended June 30, 1976, the following footnote was disclosed:

"The County Board of Education and the City Board of Education agreed upon a settlement of compensation for transferring deeds of various schools in areas annexed by the city during 1968, 1969, 1971, and 1972. The agreement dated June 4, 1974, states that Shelby County or the Shelby County Board of Education shall have the right to issue County School Bonds or to use any other local funds, subject to Average Daily Attendance distribution as required by state laws, for capital improvement purposes without the necessity of making an average daily attendance distribution to the City Board of Education other than as a credit against this settlement until such credit shall accumulate to \$8,213,768.01. An additional credit of \$3,030,338.62 was agreed upon during the 1975-1976 school year, for four additional annexed schools. As of June 30, 1976, the total unused credit was \$8,767,106.63."

For the year ended June 30, 1977, the following footnote was disclosed:

"The Shelby County Board of Education and the City of Memphis Board of Education agreed upon a settlement of compensation for transferring deeds of various schools in areas annexed by the City during 1968, 1969, 1971, and 1972. The agreement, dated June 4, 1974, states that Shelby County or the Shelby County Board of Education shall have the right to issue County School Bonds or to use any other local funds, subject to Average Daily Attendance distribution as required by state laws, for capital improvement purposes without the necessity of making an average daily attendance distribution to the City Board of Education other than as a credit against this settlement until such credit shall accumulate to \$8,213,768.01. An additional credit of \$3,030,338.62 was agreed upon during the 1975-1976 school year, for four additional annexed schools. As of June 30, 1977, the total unused credit was \$8,727,106.63."

For the year ended June 30, 1978, the following footnote was disclosed:

"The Shelby County Board of Education and the City of Memphis Board of Education agreed upon a settlement of compensation for transferring deeds of various schools in areas annexed by the City during 1968, 1969, 1971, 1972, and 1974. The agreement, dated June 4, 1974, states that Shelby County or the Shelby County Board of Education shall have the right to issue County School Bonds or to use any other local funds, which are subject to Average Daily Attendance distribution as required by state laws, for capital improvement purposes without the necessity of making an average daily attendance distribution to the City Board of Education other than as a credit against this settlement."

SCHEDULE A – DESCRIPTION OF PROCEDURES AND FINDINGS (Continued)

The agreed upon value of properties annexed since 1968 totals \$11,244,106.63. The total credits issued to the City Board of Education totals approximately \$10,947,000.00. This leaves a balance in favor of the County Board of Education in the amount of approximately \$297,106.63.

A new agreement was signed on October 2, 1978 and contained substantially the same terms as the agreement dated June 4, 1974 but covered specifically the proceeds of an anticipated \$12,000,000.00 general obligation bond issue. Under the terms of the new agreement the City Board of Education will receive their average daily attendance ratio, which is currently 83%, of the \$12,000,000 as a credit to be used to acquire county school property in any areas which are annexed by the City of Memphis."

For the years ended June 30, 1979 to June 30, 1995, the following footnote was disclosed:

"The Shelby County and City of Memphis Boards of Education have entered into an agreement providing for the City to compensate the County for the costs of schools on land annexed or to be annexed by the City. The agreement allows the County to issue bonds for County school construction up to a maximum of twelve million dollars (\$12,000,000) without having to distribute any of the proceeds to the City as required by state law. In exchange, the City will not be required to compensate the County for the cost of schools annexed in the future up to \$9,960,000."

Municipal Public School Systems Currently Operating in Tennessee

Currently, Tennessee has 27 municipal school districts. Data related to these districts are presented in Tables 1 and 2.

Of special interest to this feasibility study are data associated with the Tennessee Department of Education application for ESEA waiver from the U.S. Department of Education. According to Tennessee Commissioner of Education, Kevin Huffman in a memo dated November 14, 2011, the USDOE ESEA Flexibility Request rules require the Tennessee Department of Education to identify three groups of schools and to submit draft lists designating schools in these categories: Reward schools, Priority schools, and Focus schools.

The Commissioner reported that 169 schools had been recognized as Reward schools. Reward schools can be identified two ways: (a) the 5% of schools with the highest performance based on graduation rates and proficiency across a composite of assessments; and (b) the 5% of schools making the fastest progress based on TVAAS scores. **Eleven of the 27 municipal districts (41%) had Reward schools, i.e., those performing in the top 5% of all schools in Tennessee.**

Priority schools are the 5% of schools with lowest overall proficiency in the state (total of 85 schools). These Priority schools were identified based on their high school graduation rates and proficiency across a composite of standardized tests. **Priority schools identified in the draft list submitted with the ESEA application are found only in three school districts: Memphis City Schools, Metro Nashville, and Hamilton County. Of these 85 Priority schools, 68 schools (80%) were located in Memphis City Schools.**

Following are data associated with the 27 Tennessee municipal school districts. It is informative to note that these data indicate that numerous municipalities in Tennessee successfully operate small school districts. The average enrollment size of the existing 27 school districts is less than the projected enrollment size of four of the six projected municipal school districts in Shelby County that were examined in this feasibility study.

Table 1: Tennessee Municipal School District Data

<i>School District</i>	<i>Alamo</i>	<i>Alcoa</i>	<i>Athens</i>	<i>Bells</i>	<i>Bristol</i>	<i>Cleveland</i>
Number of Schools	1	3	6	1	8	8
Grades Served	PK-6	PK-12	PK-9	PK-5	PK-12	PK-12
Students	658	1,757	1833	407	6970	4999
Teachers	40	109	116	29	267	306
Administrators	6	8	10	2	24	20
Student Demographics						
African American	66	359	248	71	227	754
Asian / Pacific Islander	0	9	20	6	37	119
Hispanic	92	108	152	95	78	494
Native American / Alaskan	0	1	4	2	8	9
White	500	1280	1409	233	3620	3623
Limited English Proficient	65	72	55	67	54	215
Students with Disabilities	74	248	273	44	587	689
Economically Disadvantaged	413	852	658	286	1946	3005
Title 1	658	1757	1695	71	1447	3891
Female	353	825	897	198	1929	2442
Male	305	932	936	209	2041	2557
Per Pupil Exp per ADA	\$8,142	\$10,128	\$9,342	\$9,338	\$9,754	\$8,873
% Local Funding	10.5	51.5	32.9	12.7	49.3	37.4
% Federal Funding	14.6	7.8	17.4	18	12.5	14
% State Funding	78.8	40.7	49.7	69.3	38.2	48.7

Table 1 (continued)

<i>School District</i>	<i>Clinton</i>	<i>Dayton</i>	<i>Dyersburg</i>	<i>Etowah</i>	<i>Elizabethton</i>	<i>Fayetteville</i>	<i>Greeneville</i>
Number of Schools	3	1	4	1	6	3	7
Grades Served	PK-6	PK-8	PK-12	KG-8	PK-12	Pk-9	PK-12
Students	878	799	3299	363	2241	1054	2786
Teachers	61	54	204	27	157	70	208
Administrators	4	4	14	3	12	8	18
Student Demographics							
African American	40	47	1261	18	88	284	211
Asian / Pacific Islander	6	12	38	3	16	10	32
Hispanic	17	78	88	12	33	41	121
Native American / Alaskan	1	3	1	2	10	2	4
White	814	659	1911	328	2094	717	2418
Limited English Proficient	4	56	58	3	9	13	64
Students with Disabilities	171	117	409	53	379	99	549
Economically Disadvantaged	519	476	2233	260	1071	541	1125
Title 1	878	799	2290	363	636	504	2414
Female	432	376	1627	167	1094	505	1340
Male	446	423	1672	196	1147	549	1446
Per Pupil Exp per ADA	\$9,527	\$7,698	\$9,051	\$10,014	\$9,183	\$8,668	\$10,237
% Local Funding	38	20	32.3	23.6	33.2	31.2	42.4
% Federal Funding	13.7	17	18.2	19.3	13.6	14.1	14.8
% State Funding	48.3	63	49.5	57.1	53.3	54.7	42.7

Table 1 (continued)

<i>School District</i>	<i>Humboldt</i>	<i>Johnson City</i>	<i>Kingsport</i>	<i>Lenoir</i>	<i>Lexington</i>	<i>Manchester</i>
Number of Schools	4	10	12	3	2	3
Grades Served	PK-12	PK-12	PK-12	PK-12	PK-8	PK-9
Students	1393	7381	6574	2258	1048	1404
Teachers	96	508	441	136	79	101
Administrators	14	25	47	10	6	9
Student Demographics						
African American	1040	838	585	36	253	72
Asian / Pacific Islander	1	171	121	9	12	30
Hispanic	26	417	206	387	33	154
Native American / Alaskan	3	13	18	0	1	1
White	323	5942	5664	1826	749	1147
Limited English Proficient	14	280	77	292	16	119
Students with Disabilities	186	1011	1170	282	125	292
Economically Disadvantaged	1230	3539	3255	1346	605	849
Title 1	986	2725	2019	1031	1048	1404
Female	678	3609	3222	1097	506	670
Male	715	3772	3352	1161	542	734
Per Pupil Exp per ADA	\$9,628	\$9,059	\$10,052	\$8,458	\$8,874	\$9,903
% Local Funding	22.4	49.5	53.2	42.1	29.1	42.7
% Federal Funding	20.6	13.6	11.1	11.4	13.3	11.4
% State Funding	57.1	36.9	35.7	46.5	57.7	45.9

Table 1 (continued)

<i>School District</i>	<i>Maryville</i>	<i>Murfreesboro</i>	<i>Newport</i>	<i>Oak Ridge</i>	<i>Rogersville</i>
Number of Schools	7	12	1	8	1
Grades Served	PK-12	PK-12	KG-8	PK-12	PK-8
Students	5004	7078	796	4587	697
Teachers	320	470	62	347	48
Administrators	18	24	3	23	4
Student Demographics					
African American	190	1822	51	719	22
Asian / Pacific Islander	140	380	15	184	12
Hispanic	112	647	3	270	9
Native American / Alaskan	10	20	7	9	0
White	4552	4209	719	3405	654
Limited English Proficient	119	475	8	136	12
Students with Disabilities	644	868	108	1042	42
Economically Disadvantaged	1582	3849	398	2009	283
Title 1	1239	4706	250	1360	697
Female	2397	3430	398	2226	350
Male	2607	3648	398	2361	347
Per Pupil Exp per ADA	\$9,403	\$8,644	\$9,282	\$11,813	\$8,622
% Local Funding	51.8	42.1	28.9	53.1	32.7
% Federal Funding	7.6	12.8	17	9.8	10.1
% State Funding	40.6	45.1	54.1	37.1	57.2

Table 1(continued)

<i>School District</i>		<i>Sweetwater</i>		<i>Tullahoma</i>		<i>Union City</i>
Number of Schools		4		7		3
Grades Served		PK-8		PK-12		PK-12
Students		1535		3443		1494
Teachers		104		234		112
Administrators		7		14		8
Student Demographics						
African American		97		298		605
Asian / Pacific Islander		14		60		3
Hispanic		113		108		112
Native American / Alaskan		2		8		0
White		1309		2969		774
Limited English Proficient		94		57		70
Students with Disabilities		224		656		161
Economically Disadvantaged		1102		1501		925
Title I		1535		1120		1494
Female		735		1672		720
Male		800		1771		774
Per Pupil Exp per ADA		\$8,229		\$10,021		\$8,704
% Local Funding		22.4		46.5		34.3
% Federal Funding		17.5		13.7		15.4
% State Funding		60.1		39.8		50.3

Table 2: Summary Statistics

Average Number of Students per District	1865
Average Expenditure Per Pupil Exp per ADA	\$9,283
Average % Local Funding	35.77%
Average % Federal Funding	14.09%
Average % State Funding	50.30%

Demographics and Governmental Characteristics of Lakeland, Tennessee

Located in Shelby County, Lakeland is northeast of Memphis and approximately 23 miles from downtown Memphis. Population of Lakeland as of 2010 is 12,430. The 2010 U.S. Census reports the median age in Lakeland is 37.7. According to the 2000 census Lakeland has 2,904 total housing units with a 94.6 occupancy rate. Of the 2,748 occupied housing units, 78.2 percent are owner-occupied and 21.8 percent are renter occupied. In 2009, 96.1 percent of the population over 25 had obtained a high school diploma or higher. City of Lakeland government is led by a Board of Commissioners. The Board of Commissioners also appoints the City Manager to oversee daily operations.

<http://www.lakelandtn.gov/>

<http://factfinder.census.gov>

<http://quickfacts.census.gov/qfd/states/47/4740350.html>

Projected Lakeland School District Average Daily Membership (ADM) Student Enrollment

Given in the table below are the projected ADM enrollments for the Lakeland Elementary School.. The leaders of the City of Lakeland stated a strong desire to create a school district that places students as the top priority and permits students to attend their current schools so long as instructional space permits. Therefore, these projected enrollment data for the school within Lakeland includes all current public school students who reside within the City of Lakeland municipal boundaries who are currently zoned to attend Lakeland Elementary School. In addition, the students who reside within the City of Lakeland and who are currently zoned to attend schools located in either Arlington or Bartlett have been included in the projected enrollment calculations for their currently assigned schools in those respective municipalities. Leaders of both the Town of Arlington and the City of Bartlett have indicated a willingness to continue to serve these students from the City of Lakeland under a negotiated Cooperative Educational Contract so long as instructional space permits.

Projected Average Daily Membership Enrollments by School

School	Lakeland Elem K-5
Projected Enrollment	819

Total School District Projected Racial and Ethnicity Percentages

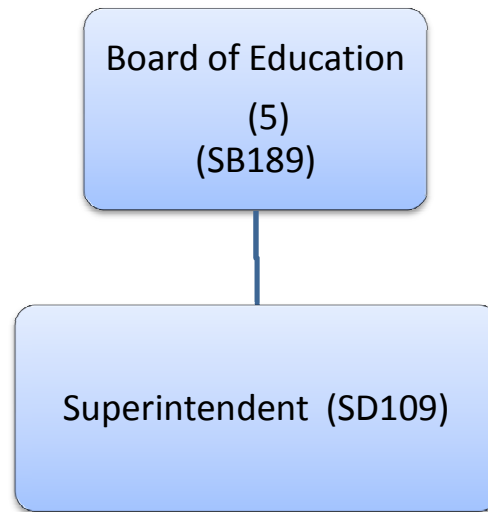
	African American	Asian	American Indian	Hispanic	Multi-racial	Pacific Islander	White
Percent	7.06	9.25	0.24	1.58	0.73	0.12	81.02

Overview of Essential Academic Program and Operational Requirements

Central Office Organizational Structure

A primary role of a school district's central office staff is to communicate district policies and procedures and to monitor their application and implementation. Personnel also provide support and assistance to site-based educators. As a service provider, the central office can provide assistance as needed or desired, thereby building capacity of the district schools. The superintendent and central office personnel continue to be responsible for overall operation of district, ensuring effective teaching and learning, and measuring success of the school program. Current research and literature suggests that an ideal central office structure be as lean as possible.

Tennessee State Board of Education Rules require that districts "employ a full-time superintendent who shall meet the legal and regulatory requirements for county and city superintendents, and who shall be paid an annual salary of at least the amount paid to a county superintendent of schools having the same training and experience under the state salary schedule" (Chapter 0520-1-8). Because of the nature of state and federal accountability, safety and security mandates, curriculum and instruction requirements, information and technology, food and nutrition, and a host of other support services, the superintendent must be supported by a number of essential offices in order to perform his or her functions in an effective and efficient manner. The organizational chart that follows presents a recommendation for such an office. The letters and numbers on the chart refer to the specific expenditure account numbers found in the revenue and expenditure summary located in the fiscal section of this study.



Employment of a Superintendent of Schools

As mentioned earlier, State Board of Education Rules require that districts “employ a full-time superintendent who shall meet the legal and regulatory requirements for county and city superintendents, and who shall be paid an annual salary of at least the amount paid to a county superintendent of schools having the same training and experience under the state salary schedule” (Chapter 0520-1-8). The American Association of School Administrators has used the analogy of an orchestra leader in describing the role of school superintendent. Like an orchestra leader, the superintendent conducts the operations of a myriad set of organizational functions. In addition to being a competent manager of district human, information, and fiscal resources, he or she must be an effective leader. As a leader, the superintendent must be prepared to advance the opportunities for academic and career success for students, work through and with parents and community members, communicate with stakeholders, foster an educational experience that maximize the effective delivery of an instructional program, and demonstrate a commitment to excellence. (See Appendix E for a list of duties of a Tennessee Superintendent of Schools)

Some Boards of Education prefer to search for a superintendent using their own human resources department. Many other districts employ a professional services firm or a state professional association. There are advantages and assets to each alternative. If an external group or firm’s services are enlisted, it is suggested that several components be considered:

1. Advice to the Board on the general search process
2. Advice to the Board regarding a compensation package
3. Preparation of a realistic timeline
4. Assistance with the development of a position description and search criteria
5. Development of an acceptable recruitment process
6. Identification of a diverse pool of candidates
7. Creation of a screening and selection process

Certificated Personnel Staffing

Numerous research studies confirm that effective teachers are the most important factor in student academic success. Recruiting, employing, compensating, and retaining the highest quality professional teachers are the most critical tasks of any public school superintendent and human resources department.

Enrollment projections for the proposed Lakeland Municipal School District indicate that approximately 65 certified professional employees will be needed to provide a comparable academic program to the one now offered. This staffing level is provided in the proposed expenditures found in the Fiscal Requirements section of this study.

In the State of Tennessee, the local school board employs a superintendent of schools. All other employees in the school district are then employed by the superintendent. Therefore, the first critical task for the superintendent is the selection of a deputy superintendent and a human resources director. These leaders must recruit, interview, and employ all of the persons to be employed by the school district, including teachers, principals, assistant principals, and professional support staff such as counselors, librarians, and substitute teachers. The total number of Lakeland school district certified and classified employees as projected in this study will be approximately 94.

Educational certification or a license is generally required of persons working directly with students in the schools. Some districts may refer to a certificate or licenses as an “endorsement.” To become a licensed Tennessee elementary or secondary teacher, school counselor, school social worker, school psychologist, speech/language pathologist, school audiologist, or school administrator, an individual must: (a) successfully complete a preparation program in the area of interest at an approved teacher education institution, (b) complete Praxis Series Exams for state licensing, and (c) be recommended for licensure by the Dean of Education and the Certification Office of the college/university. Applicants seeking initial licensure or additional endorsements must pass all applicable portions of the Praxis Series Exams, developed and administered by the Educational Testing Service (ETS). Upon completion of all requirements, the Dean of Education of the college/university shall send a recommendation to the Tennessee Office of Teacher Licensing for issuance of the appropriate license or add-on endorsement (<http://www.tn.gov/education/lic/in.shtml>). In general, certificated personnel will hold least a bachelor’s degree from an accredited college or university, a valid Tennessee teaching certificate for the level and/or subject area to be taught, or be eligible for a temporary, alternative Tennessee teaching certificate. In addition, being “Highly Qualified” under No Child Left Behind (NCLB) legislation may be required.

Classified Personnel Staffing

Classified personnel in schools or school districts generally are not required to hold certification or license but must meet the minimum qualifications for the position. Examples of classified personnel positions are secretaries, clerks, warehouse staff, school plant managers, occupational therapists, physical therapists, nurses, child care workers, teacher assistants, bookkeepers, bus drivers (must have a Commercial Driver License), cafeteria workers, maintenance technicians, and others. All persons who work in schools must pass criminal background checks, must be fingerprinted, and, depending upon their job assignment, some must pass physical and drug tests. Approximately 29 classified personnel will be required.

Support Services

New municipal school districts have at least three major options to consider regarding the provision of support services:

1. Employ all staff and provide all support services entirely through the new municipal school district organization and operate independently of any other local school district.
2. Use the options provided under TCA § 7-51-908, TCA §49-2-1001 or TCA § 49-2-1301-08 to enter into Cooperative Educational Contracts with other municipal school districts or with Shelby County Schools to provide such services.
3. Consider contracting with private corporations such as ARAMARK or Durham School Services which specialize in providing school support services.

Considering all factors, the most efficient approach at this time appears to be the development of a Cooperative Educational Contract (CEC) with Shelby County Schools to continue to provide major support services including school nutrition, school transportation, instructional technology repair, and maintenance and energy management. All of the trained staff, equipment, supplies, and facilities are already in place at the Shelby County Schools Operations Center, located at 2800 Gray's Creek Drive, Arlington, Tennessee. This facility is located in the geographic center of the proposed new municipal districts. Further, if new municipal districts are formed, the SCS Operations Center may be over staffed and under-utilized for a remaining role in the unified Shelby County Schools. Cooperative Educational Contracts (CEC) have been used many times by Shelby County Schools and Memphis City Schools. This approach is also commonly used in numerous Tennessee school districts.

School Nutrition

School nutrition programs should contribute to both student wellness and development of healthy lifestyles through proper diet and nutrition education. A school nutrition manager will generally be responsible for organizing, directing, training, and assisting school nutrition personnel in the daily preparation of large quantities of food. In addition, the manager will maintain the policies and standards of the board of education, state and federal school nutrition programs regarding food preparation, sanitation, meal service, and record keeping. Furthermore, the manager must operate the school food service program consistent with all government regulations and requirements.

The number of students who qualify for (FRL) Free/Reduced Price Lunch is a variable for calculating BEP revenue. The number of students who are FRL in each school for the contemplated district was determined and entered into BEP revenue calculations. Nutrition service expenses, however, are not included in the following detailed list of revenue and expenses except for a school nutrition supervisor. School nutrition programs are funded through “pass-through” revenues derived from sources such as student and faculty meal purchases, federal reimbursements, and other revenues.

School Transportation

The cost specification related to total pupil transportation has historically been specified and calculated apart from the BEP model by the Tennessee’s Commissioner of Education. According to a recent report by the Offices of Research and Education Accountability at the Tennessee Comptroller of the Treasury, this formula takes into account each district’s number of pupils transported, miles transported, and density of pupils per route mile.

For the purpose of BEP transportation funding estimates in this report, Basis did not attempt to re-create the Commissioner’s formula using actual operational data on the state’s present districts and estimated operational data on the New Districts. Instead, Basis estimated revenues for pupil transportation in the new districts by redistributing the total revenues attributed to Shelby County Schools in fiscal year 2010-2011 to the seven districts hypothesized to be operating within the county (i.e., the New Districts and Shelby County Schools, itself) on a pro-rata basis based on their respective total ADMs. That is, it was assumed the aggregate cost of pupil transportation within Shelby County would not change, and that this cost would be shared across all seven districts within its boundaries according to the relative sizes of their respective student populations.

Approximately 50% of the students currently enrolled in Shelby County Schools utilize the transportation services that are provided. This percentage was used to calculate the projected transportation expense for each municipality. Adequate expenditure estimates are included for each municipality to provide for comparable student transportation operations either through Cooperative Educational Contracts with other school districts or through outsourcing. Transportation expense estimates were also obtained from a private school transportation provider, Durham School Services. These estimates were consistent with the current average SCS costs. It is recognized that these transportation cost estimates are subject to many variables that could cause costs to adjust.

Instructional Technology

Technology is at the center of almost every aspect of our lives and work. Schools and classroom instruction must be able to use technology assets to provide productive, engaging, and powerful learning experiences and content, as well as resources and assessments that measure student achievement in more complete, authentic, and meaningful ways. Technology-based learning and assessment systems will be pivotal in improving student learning and generating data that can be used to continuously improve the education system at all levels. Technology will help us execute collaborative teaching strategies combined with professional learning that better prepare and enhance educators' competencies and expertise over the course of their careers. There are many purposes and functions associated with instructional technology (and which may be linked also to library media):

- providing vision, purpose, and leadership to educators for effective utilization of instructional technology and library media
- promoting the delivery of instruction that engages students and promotes academic achievement
- advocating for the allocation of resources for instructional technology and library media
- providing ongoing professional development to educators in the effective use of technology and library media resources.
- offering guidance and serve as a clearing house for the evaluation of instructional technology and library media
- promoting equity, equality, and excellence as related to instructional technology and library media.

Costs presented as part of the projected district budget include estimated technology expenses at level that would provided comparable services as presently exist. These expenses include teacher laptop computer leasing, staffing (at the same level as currently in SCS), management and instructional technology support, repair, business services, communications, and telephony. Education Networks of America (ENA) currently provides Internet-related services. Laptop computers assigned to individual teachers are leased.

Quick, efficient, and accurate repair of the thousands of laptop and desktop computers and other instructional technology now in use in local schools is critical to school success. Currently, all such repairs for Shelby County Schools are made at the SCS Operations Center. The center is staffed

with technicians who are both Microsoft and Apple certified. As stated above, the development of a Cooperative Educational Contract (CEC) between municipal school districts and the Shelby County Schools to continue to provide these support services would be in the best interests of both parties. The detailed expenditure data that follows used the proportional current costs to project the costs of such services for each municipality.

Maintenance and Operations

Many educational leaders will argue that the maintenance and operations component of the school district organization is second only to the instructional areas. The Maintenance and Operations Department of the school district is responsible for the numerous repairs related to electrical, plumbing, heating, air conditioning, and alarm systems, general maintenance, and minor renovation activities required on a regular basis within the school system so that facilities and grounds are conducive to learning. The department may also be responsible for minor construction requests that the schools administration may have. The department, in addition, may offer facility assessments as well as recommendations for reducing energy costs and increasing energy efficiency at existing schools.

Maintenance and operation services may be handled all or in part by the municipality. However, as stated above, a Cooperative Educational Contract may be the most efficient method to provide these services. The unique requirements of maintenance services, however, must be carefully considered due to the nature of school facilities and the students. For example, a rest room or laboratory in need of repair or a water leak requires immediate attention, unlike some public facilities.

Based on current SCS analysis of capital improvement needs, there are major repairs and facility improvement costs specified over the next 3 years. A copy of the Shelby County School' Capital Improvement Program is included in Appendix B. These expenses are not included in the projected operating expenditures section.

Custodial Services

Expenditure estimates for custodial services were based on the use of GCA Services Group, Inc. that is currently contracted in Shelby County Schools. GCA Services Group, Inc. is a national provider of quality facility services, including janitorial/custodial services, contamination control for cleanroom manufacturing, facilities operations and maintenance, grounds management, etc. The municipality may elect to handle maintenance, operation, and custodial services all or in part through an existing municipal department.

Fiscal Requirements

Projected Revenues

The following section presents the detailed analysis of the contemplated Lakeland municipal school district anticipated revenue streams. Revenue generation is focused on funds derived from local and state sources that would support the operational components. Federal funds are not included as these are essentially flow-through funds used to supplement special instructional areas. Analysis related to school nutrition revenue is also not included as these are flow-through funds. The detailed fiscal analysis of state revenues included local revenues based on actual SCS Average Daily Membership (ADM) as described above and generated by the Basic Education Program.

PROJECTED REVENUES

<u>ASN</u>	<u>Description</u>	<u>2011-12 BUDGET</u>
TOTAL	COUNTY AND MUNICIPAL TAXES	3,289,507
TOTAL	CHARGES FOR SERVICES	304
TOTAL	RECURRING LOCAL REVENUE	6,981
TOTAL	NONRECURRING LOCAL REVENUE	4,623
TOTAL	STATE EDUCATION FUNDS	3,390,064
TOTAL	OTHER STATE REVENUE	15,346
TOTAL	FED FUNDS RCVD THRU STATE	10,131
TOTAL	DIRECT FEDERAL REVENUE	1,718
TOTAL	OTHER SOURCES	28,271
	RESERVES	0
	GRAND TOTAL REVENUES	<hr/> 6,746,946

**See Appendix F for calculation of BEP funds. This revenue includes Lakeland Municipal School District's share of the Basic Education Program (BEP) and other flow-through state funds such as Career Ladder and Extended Contract.*

COUNTY TAXES

<u>ASN</u>	<u>Description</u>	<u>2011-12 BUDGET</u>
RL110	Current Property Tax	1,880,423
RL112	Trustee Collection (prior year)	62,662
RL113	Circuit Court (prior Year)	25,764
RL115	Municipal Property Tax	491,460
RL116	Pay In lieu of Taxes-Utility	23,665
RL163	Pay In lieu of Taxes-Exempt Prop.	25,534
RL210	Local Option Sales Tax	745,852
RL240	Wheel Tax	33,844
RL270	Privilege Tax	303
TOTAL COUNTY TAXES		3,289,507

Informational Note:

Includes Lakeland Municipal School District's pro rata share Shelby County Schools' share of Shelby County property taxes, local option sales taxes and wheel tax based on the average daily attendance(ADA) distribution projected to be 31% for Shelby County Schools in 2011-2012. . Municipal property tax is 100% for Lakeland.

CHARGES FOR SERVICES

<u>ASN</u>	<u>Description</u>	<u>2011-12 BUDGET</u>
RV354	Tuition-Virtual School	304
RV399	Other Charges for Services	0
TOTAL CHARGES FOR SERVICES		304

RECURRING LOCAL REVENUE

<u>ASN</u>	<u>Description</u>	<u>2011-12 BUDGET</u>
RR110	Interest Earned	0
RR120	Lease/Rentals	4,744
RR130	Laptop Insurance Payments	2,238
TOTAL RECURRING LOCAL REVENUE		6,981

Informational Note:

Includes interest earned from investment with the Local Government Investment Pool(LGIP), lease and rental income.

NONRECURRING LOCAL REVENUE

<u>ASN</u>	<u>Description</u>	<u>2011-12 BUDGET</u>
RN452	Insurance Recovery	1,522
RN453	Sale of Equipment	0
RN456	Damages Recovered/Individuals	1,522
RN499	Other Local Revenue	1,580
TOTAL NONRECURRING LOCAL REVENUE		4,623

Informational Note:

Includes funds received from annual auction of surplus material and equipment, collections for lost textbooks, library fines, and insurance claims made by the Board on individuals or other enterprises.

STATE EDUCATION FUNDS

<u>ASN</u>	<u>Description</u>	<u>2011-12 BUDGET</u>
RS511	Basic Education Program	3,323,871
RS590	Other State Education Funds	29,390
RS610	Career Ladder Program	28,660
RS612	Extended Contracts	8,143
TOTAL STATE EDUCATION FUNDS		3,390,064

Informational Note:

Includes Lakeland Municipal School District's share of the Basic Education Program(BEP) and other flow-through state funds such as Career Ladder and Extended Contract.

OTHER STATE REVENUE

<u>ASN</u>	<u>Description</u>	<u>2011-12 BUDGET</u>
RO850	Mixed Drink Tax	15,346
TOTAL OTHER STATE REVENUE		15,346

Informational Note:

Includes Lakeland Municipal School District's pro rata share of Shelby County Schools' share of one half of tax assessed on the seating capacity of establishments serving mixed drinks based on the Average Daily Attendance(ADA) distribution of 31% for Shelby County Schools.

FED FUNDS RCVD THRU STATE

<u>ASN</u>	<u>Description</u>	<u>2011-12 BUDGET</u>
RF143	EHA Excess Cost Funds	5,370
RF189	Other Federal Thru State	4,761
TOTAL FED FUNDS RCVD THRU STATE		10,131

Informational Note:

Includes funds for financial assistance for "high cost" special education students, and other federal funds that come through the State of Tennessee. This category also includes the ACT Plan and Explore funding that comes from the State of Tennessee.

DIRECT FEDERAL REVENUE

<u>ASN</u>	<u>Description</u>	<u>2011-12 BUDGET</u>
RD630	Public Law 874	1,718
RD990	Other Direct	0
TOTAL DIRECT FEDERAL REVENUE		1,718

Informational Note:

Includes Federal PL874, Impact Aid funds for reimbursement for cost of educating students whose parents are employees of the Federal government or who work or live on a federal facility.

OTHER SOURCES

<u>ASN</u>	<u>Description</u>	<u>2011-12 BUDGET</u>
RT800	Indirect Costs - Fed Programs/Grants	28,271
RT900	Equity Transfers	0
TOTAL OTHER SOURCES		28,271
TOTAL ESTIMATED REVENUE		6,746,946
RESERVES		0
TOTAL AVAILABLE REVENUES		6,746,946

Informational Note:

Includes reimbursement from the federal projects to cover a portion of the administrative and clerical costs of administering programs.

Projected Expenditures

Fiscal issues associated with expenditures employed detailed templates that present the estimated required operating costs, broken out by standard school budget categories, required to create an educational program comparable to that provided by the current Shelby County Schools. The ratio of Lakeland Average Daily Attendance (ADA) to the Shelby County Schools ADA offered a basis for cost and budget calculations. Actual ADM enrollment data provided a basis for projection of the instructional personnel – a major expenditure in any education budget – by school (re-staffing at the same faculty ratios as 2011 - 2012). Current (2011 – 2012) Shelby County Schools average teacher salaries and benefits were used in cost estimates as new districts will be legally required to provide the same teacher salaries (State Board of Education Rules, Chapter 0520-1-8). It should be noted that Tennessee Consolidated Retirement System contribution costs for a school district are subject to change from year-to-year according to state actuarial analysis. Personnel assignments related to special education and career and technical education were based on current staffing levels in order to offer comparability to the existing program.

An important related component included the analysis of facility capacity in the Lakeland Elementary School and the most effective utilization of this resource. As previously stated, actual ADM enrollment data provided a basis for projection of the required instructional personnel in the respective schools.

Custodial services cost estimates were based on GCA Services Group, Inc. that is currently contracted in Shelby County Schools. Maintenance and operation services were estimated based on current Shelby County Schools costs. However, these services may be handled all or in part by the public works staff of the municipality. The unique requirements of maintenance services, as indicated earlier, must be carefully considered due to the nature of school facilities and the students.

Transportation cost estimates were estimated based upon the current Shelby County Schools costs. Approximately 50% of the current Shelby County Schools students are transported by school bus. The transportation costs were estimated based on this percentage. In addition, SES obtained estimated transportation costs from a school transportation contractor, Durham School Services.

Technology expenses were estimated at level that would provide comparable services as presently exist. These expenses include faculty laptop leases, staffing, management and instructional technology support, computer repair, business services, communications, and telephony. Nutrition service expenses are addressed in another section of the study. Lastly, expenses associated with major capital improvement are not included in the operating expenses. However, the Shelby County Schools

five-year capital improvement plan provides information regarding future capital needs at various schools and the plan is included in Appendix B.

PROJECTED EXPENDITURES

<u>Description</u>		2011-12 <u>PERS</u>	2011-12 <u>BUDGET</u>
TOTAL	REGULAR INSTRUCTION	59	4,008,810
TOTAL	EDUCATION FOR HANDICAPPED	6.5	449,782
TOTAL	HEALTH SERVICES	1	40,316
TOTAL	OTHER STUDENT SUPPORT	2	164,089
TOTAL	SUPPORT: REG. INSTRUCTION	1	95,098
TOTAL	SUPPORT: SPEC. EDUCATION	3.0	161,199
TOTAL	BOARD OF ED. SERVICES	5	225,187
TOTAL	OFFICE OF SUPERINTENDENT	2	266,804
TOTAL	OFFICE OF PRINCIPAL	7	461,766
TOTAL	OPERATION OF PLANT	1	305,836
TOTAL	MAINTENANCE OF PLANT	0	28,855
TOTAL	TRANSPORTATION	3	167,897
TOTAL	TECHNOLOGY	3	340,370
TOTAL	REGULAR CAPITAL OUTLAY	0	23,914
GRAND TOTAL EXPENDITURES		94	6,739,925

REGULAR INSTRUCTION PROGRAM

<u>ASN</u>	<u>Description</u>	2011- 12 <u>PERS</u>	2011-12 <u>BUDGET</u>
IR100	Teachers	51	2,873,504
IR117	Career Ladder		19,867
IR127	Extended Contracts		6,842
IR163	Educational Assistants (Local)	1	21,575
IR164	Educational Assistants (State)	7	118,481
IR195	Substitute Teachers - Certified		17,799
	Substitute Teachers - Non		
IR198	Certified		29,535
IR201	Social Security		191,431
IR204	State Retirement(Teacher)		262,469
IR205	State Retirement (Classified)		12,297
IR206	Life Insurance		23,375
IR207	Medical Insurance		239,000
IR212	Medicare		44,342
SUBTOTAL SALARY & FRINGES		<hr/> 59	<hr/> 3,860,516

Informational Note:

Includes salaries and benefits for teachers, classroom assistants. Career Ladder and Extended Contracts are State funded initiatives. Teachers and all certificated salaries based on SCS salaries and could be higher in 2013 due to inflation and/or "leveling-up" to match salaries of MCS after unification. Required teacher and classified employee retirement contribution rates are determined annually on an actuarial basis by the State of Tennessee.

REGULAR INSTRUCTION PROGRAM

<u>ASN</u>	<u>Description</u>	<u>2011-12 BUDGET</u>
	Maintenance & Repair -	
IR336	Equipment	906
IR399	Other Contracted Services	3,589
IR429	Instructional Supplies & Materials	54,423
IR449	Textbooks	75,624
IR499	Other Supplies & Materials	4,028
IR599	Other Charges	904
IR722	Regular Instruction Equipment	8,821
	Instructional	
IR723	Equipment(Reimbursed)	0
	SUBTOTAL SERVICES	<hr/> 148,294
	TOTAL REGULAR INSTRUCTION	<hr/> 4,008,810

Informational Note:

Includes costs for textbooks, materials and supplies and instructional equipment provided to the school. Instructional equipment (reimbursed) includes items such as computers and audio visual equipment that is purchased by Board and paid for by individual schools.

SPECIAL EDUCATION PROGRAM

<u>ASN</u>	<u>Description</u>	<u>2011-12 PERS</u>	<u>2011-12 BUDGET</u>
IS100	Teachers	5	274,655
IS117	Career Ladder Program		1,948
IS127	Extended Contracts		671
IS128	Homebound Teachers	0	0
IS163	Educational Assistants	1	22,609
IS165	Educational Assistants (subs)		391
IS171	Speech Pathologists	0.5	29,896
IS195	Substitute Teachers - Certified		895
	Substitute Teachers - Non		
IS198	Certified		2,685
IS201	Social Security		20,692
IS204	State Retirement (Teacher)		27,799
IS205	State Retirement (Classified)		2,004
IS206	Life Insurance		2,575
IS207	Medical Insurance		26,330
IS212	Medicare		4,839
SUBTOTAL SALARY & FRINGES		<hr/> 6.5	<hr/> 417,989

Informational Note:

Includes salaries and benefits for teachers, behavioral specialists, and classroom assistants used in Special Education Classes including resource and CDC classes as well as APEX(gifted) classes. Includes homebound teachers who go to individual student's homes if they are unable to attend school because of illness or hospitalization. Teachers are assigned on current SCS staffing level.

SPECIAL EDUCATION PROGRAM

<u>ASN</u>	<u>Description</u>	<u>2011-12 BUDGET</u>
	Contracts W/Other School	
IS311	Systems	4,475
IS312	Contracts W/Private Agencies	6,265
IS336	Maintenance & Repair -Equipment	510
IS399	Other Contracted Services	2,276
IS429	Instructional Supplies & Materials	10,740
IS449	Textbooks	4,475
IS499	Other Supplies and Materials	967
IS725	Special Education Equipment	2,085
SUBTOTAL SERVICES		<hr/> 31,793
TOTAL SPECIAL EDUCATION		<hr/> 449,782

Informational Note:

Includes contracts for services provided by another school system and/or private providers for service (such as hearing impaired and visually impaired) that cannot be provided in a cost efficient manner by the Lakeland Municipal School district.

Includes cost of textbooks, materials and supplies, and equipment used to provide Special Education services.

**HEALTH
SERVICES**

<u>ASN</u>	<u>Description</u>	2011-12 <u>PERS</u>	2011-12 <u>BUDGET</u>
SH189	Other Salaries and Wages	1	26,034
SH201	Social Security		1,614
SH205	State Retirement-Classified		2,286
SH206	Life Insurance		396
SH207	Medical Insurance		4,051
SH212	Medicare		377
SH355	Travel		75
SH399	Other Contracted Services		134
SH499	Other Supplies and Materials		1,396
SH524	In Service/Staff Development		301
SH599	Other Charges		2,076
SH735	Health Equipment		1,575
TOTAL HEALTH SERVICES		1	40,316

Informational Note:

Includes funds for the Medical Records Clerk at the school.

OTHER STUDENT SUPPORT

<u>ASN</u>	<u>Description</u>	2011-12 <u>PERS</u>	2011-12 <u>BUDGET</u>
SY117	Career Ladder Program		562
SY123	Guidance Personnel	2	120,934
SY127	Extended Contracts		602
SY201	Social Security		7,570
SY204	State Retirement (Teacher)		11,050
SY205	State Retirement-Classified		0
SY206	Life Insurance		792
SY207	Medical Insurance		8,102
SY212	Medicare		1,770
SUBTOTAL SALARY & FRINGES		<u>2</u>	<u>151,382</u>

Informational Note:

Includes salaries and benefits for School Counselors in Elementary School to meet AdvancED (SACS) accreditation standards and Strategic Plan goals.

OTHER STUDENT SUPPORT

<u>ASN</u>	<u>Description</u>	<u>2011-12 BUDGET</u>
SY322	Evaluation & Testing	11,355
SY355	Travel	54
SY499	Other Supplies and Materials	488
SY524	In-Service/Staff Development	471
SY599	Other Charges(Misc. Fees)	0
SY790	Other Equipment	340
SUBTOTAL SERVICES		12,708
TOTAL OTHER STUDENT SUPPORT		164,089

Informational Note:

Includes costs of materials used in various required tests administered to students in elementary school. Cost for data analysis of tests is also included.

SUPPORT: REGULAR INSTRUCTION

<u>ASN</u>	<u>Description</u>	<u>2011-12 PERS</u>	<u>2011-12 BUDGET</u>
SR129	Librarians	1	61,373
SR196	In-Service Training		3,939
SR201	Social Security		4,049
SR204	State Retirement (Teacher)		5,657
SR206	Life Insurance		396
SR207	Medical Insurance		4,051
SR212	Medicare		947
SUBTOTAL SALARY & FRINGES		1	80,412

Informational Note:

Includes salaries and benefits for school librarian.

SUPPORT: REGULAR INSTRUCTION

<u>ASN</u>	<u>Description</u>	<u>2011-12 BUDGET</u>
SR432	Library Books	6,346
SR499	Other Supplies & Materials	1,397
SR524	In-Service/Staff Development	4,888
SR599	Other Charges	1,876
SR790	Other Equipment	179
SUBTOTAL SERVICES		14,686
TOTAL SUPPORT: REGULAR INSTRUCTION		95,098

Informational Note:

*Includes costs for library books used in schools for replacement and additional books to address enrollment growth and meet AdvancED (SACS) standards.
Includes costs for all staff development for all instructional related personnel.*

SUPPORT: SPECIAL EDUCATION

<u>ASN</u>	<u>Description</u>	<u>2011-12 PERS</u>	<u>2011-12 BUDGET</u>
SS124	Psychological Personnel	0.5	36,943
SS162	Clerical Personnel(8 Hr.)	1	29,513
SS188	Occupational/Physical Therapist	0.5	36,533
SS189	Bus Assistants	1	18,628
SS196	In-Service Training		448
SS201	Social Security		7,568
SS204	State Retirement (Teacher)		3,343
SS205	State Retirement (Classified)		7,474
SS206	Life Insurance		1,189
SS207	Medical Insurance		12,153
SS212	Medicare		1,770
SUBTOTAL SALARY & FRINGES		3.0	155,561

Informational Note:

Includes salaries psychologist, and clerical personnel located at the elementary school. Also includes bus monitors, where required, to ride Special Education buses to administer services to students who are medically fragile or have very special needs.

SUPPORT: SPECIAL EDUCATION

<u>ASN</u>	<u>Description</u>	2011-12 <u>BUDGET</u>
SS308	Consultants	179
SS355	Travel	1,522
SS399	Other Contracted Services	537
SS499	Other Supplies & Materials	1,128
SS524	In-Service/Staff Development	2,238
SS599	Other Charges	36
SUBTOTAL SERVICES		5,639
TOTAL SUPPORT: SPECIAL EDUCATION		161,199

Informational Note:

*Includes support for Special Education consultation, travel for special education personnel using personal vehicles in the performance of their job, in-service and staff development.
Includes specialized supplies, materials, and evaluations used with special populations.*

BOARD OF EDUCATION SERVICES

<u>ASN</u>	<u>Description</u>	2011-12 <u>PERS</u>	2011-12 <u>BUDGET</u>
SB118	Secretary to Board	0	0
SB189	Other Salaries & Wages	5	21,300
SB201	Social Security		1,321
SB205	State Retirement (Classified)		0
SB206	Life Insurance		1,981
SB207	Health Insurance		20,254
SB212	Medicare		309
SUBTOTAL SALARY & FRINGES		5	45,165

Informational Note:

*Includes salaries and benefits for members of the Board of Education.
Includes employee benefits related to board portion of retiree life and health insurance as well as Other Post Employment Benefits (OPEB) contributions.
Based on system's benefit plan a per person cost of approximately \$5,000 per year will need to be included for retirees beginning in 2014-2015.*

BOARD OF EDUCATION SERVICES

<u>ASN</u>	<u>Description</u>	<u>2011-12 BUDGET</u>
SB305	Audit Services	2,500
SB320	Dues & Memberships	4,000
SB331	Legal Services	15,000
SB355	Travel	750
SB499	Other Supplies and Materials	250
SB505	Judgments	8,950
SB506	Liability Insurance	3,473
SB508	Premium on Corporate Surety Bonds	500
SB510	Trustee Commissions	47,718
SB513	On Job Injuries	5,375
SB524	In-Service/Staff Development	15,000
SB599	Other Charges	76,505
SUBTOTAL SERVICES		<hr/> 180,022
TOTAL BOARD OF EDUCATION SERVICES		<hr/> 225,187

Informational Note:

Includes costs related to operation of the Board of Education, including legal services, Shelby County Trustee's commissions, and On The Job Injury program. \$75,000 included for Start-up Consultant Services related to Technology, Insurance benefits, Organizational issues, etc.

OFFICE OF SUPERINTENDENT

<u>ASN</u>	<u>Description</u>	2011-12 <u>PERS</u>	2011-12 <u>BUDGET</u>
SD101	County Official/Administrative Officer	1	150,000
SD161	Secretaries	1	54,333
SD196	In-Service Training		0
SD201	Social Security		12,669
SD204	State Retirement (Teacher)		13,575
SD205	State Retirement (Classified)		4,770
SD206	Life Insurance		792
SD207	Medical Insurance		8,102
SD212	Medicare		2,963
SUBTOTAL SALARY & FRINGES		<u>2</u>	<u>247,204</u>

Informational Note:

Includes salaries and benefits for the superintendent and superintendent's secretary. Refer to appendix E regarding duties of School Superintendent (Director).

OFFICE OF SUPERINTENDENT

<u>ASN</u>	<u>Description</u>	2011-12 <u>BUDGET</u>
SD320	Dues & Memberships	1,500
SD348	Postal Charges	2,772
SD355	Travel	500
SD399	Other Contracted Services	2,074
SD435	Office Supplies	450
SD524	In-Service/Staff Development	1,500
SD599	Other Charges	9,990
SD701	Administration Equipment	814
SUBTOTAL SERVICES		<u>19,600</u>
TOTAL OFFICE OF SUPERINTENDENT		<u>266,804</u>

Informational Note:

*Includes costs for postage and other costs associated with the Office of Superintendent.
Includes costs in "other charges" associated with Human Resources such as unemployment compensation, employee assistance program, physicals, drug testing, and other pre-employment costs.*

OFFICE OF PRINCIPAL

<u>ASN</u>	<u>Description</u>	2011-12 <u>PERS</u>	2011-12 <u>BUDGET</u>
SP102	Assistant Principals	2	168,504
SP103	Elementary/Middle Principals	1	103,601
SP117	Career Ladder		2,690
SP127	Extended Contracts		491
SP161	School Secretaries	1	31,350
SP162	Clerical Personnel(8 Hour)	2	60,562
SP163	Clerical Personnel(7Hour)	0	0
SP189	Lunch Room Monitors	1	4,116
SP201	Social Security		23,021
SP204	State Retirement (Teacher)		24,913
SP205	State Retirement (Classified)		8,113
SP206	Life Insurance		2,377
SP207	Medical Insurance		24,305
SP212	Medicare		5,384
SUBTOTAL SALARY & FRINGES		<u>7</u>	<u>459,427</u>

Informational Note:

Includes salaries and benefits for school principals, school administration, school clerical and school lunchroom monitors.

OFFICE OF PRINCIPAL

<u>ASN</u>	<u>Description</u>	2011-12 <u>BUDGET</u>
SP320	Dues & Memberships	582
SP355	Travel	625
SP399	Other Contracted Services	631
SP499	Other Supplies and Materials	0
SP524	In-Service/Staff Development	250
SP701	Administration Equipment	250
SUBTOTAL SERVICES		<u>2,338</u>
TOTAL OFFICE OF PRINCIPAL		<u>461,766</u>

Informational Note:

Includes costs associated with operation of schools including AdvancED (SACS) dues and memberships.

OPERATION OF PLANT

		2011-12	2011-12
<u>ASN</u>	<u>Description</u>	<u>PERS</u>	<u>BUDGET</u>
SO180	Plant Managers	1	46,058
SO201	Social Security		2,856
SO205	State Retirement (Classified)		4,044
SO206	Life Insurance		396
SO207	Medical Insurance		4,051
SO212	Medicare		668
SUBTOTAL SALARY & FRINGES		<u>1</u>	<u>58,073</u>

Informational Note:

Includes salaries and benefits for personnel in Plant Operations.

OPERATION OF PLANT

		2011-12
<u>ASN</u>	<u>Description</u>	<u>BUDGET</u>
SO328	Janitorial Services	94,912
SO330	Operating Lease Payments	0
SO399	Other Contracted Services	13,111
SO410	Custodial Supplies	1,880
SO415	All Utilities	125,792
SO499	Other Supplies & Materials	151
SO502	Building & Content Insurance	9,491
SO524	In-Service/Staff Development	151
SO599	Other Charges	1,343
SO720	Plant Operation Equipment	933
SUBTOTAL SERVICES		<u>247,763</u>
TOTAL OPERATION OF PLANT		<u>305,836</u>

Informational Note:

Includes costs for all utilities, trash pickup, out-sourcing cleaning, materials and supplies, environmental monitoring, security system maintenance, building insurance, and equipment needed to maintain cleanliness of buildings and grounds.

MAINTENANCE OF PLANT

<u>ASN</u>	<u>Description</u>	2011-12 <u>BUDGET</u>
SM335	Maintenance/Repair-Buildings	17,453
SM336	Maintenance/Repair-Equipment	1,164
SM399	Other Contracted Services	1,931
SM418	Equipment and Machine Parts	1,701
SM499	Other Supplies & Materials	304
SM511	Vehicle Insurance	4,869
SM717	Maintenance Equipment	1,434
SUBTOTAL SERVICES		28,855
TOTAL MAINTENANCE OF PLANT		28,855

Informational Note:

Includes costs for materials and supplies to repair and maintain facilities and equipment necessary to perform such functions.

TRANSPORTATION

<u>ASN</u>	<u>Description</u>	2011-12 <u>PERS</u>	2011-12 <u>BUDGET</u>
ST146	Bus Drivers	3	60,912
ST147	Sub. Drivers		3,555
ST201	Social Security		3,997
ST204	State Retirement (Teacher)		0
ST205	State Retirement (Classified)		5,348
ST206	Life Insurance		1,189
ST207	Medical Insurance		12,153
ST212	Medicare		935
SUBTOTAL SALARY & FRINGES		3	88,088

Informational Note:

Includes salaries and benefits for bus drivers for School Transportation.

TRANSPORTATION

<u>ASN</u>	<u>Description</u>	<u>2011-12 BUDGET</u>
ST312	Contracts with Private Agencies	322
ST355	Travel	233
ST399	Other Contracted Services	3,064
ST412	Diesel Fuel	48,294
ST424	Garage Supplies	537
ST425	Gasoline	1,701
ST433	Lubricants	1,479
ST450	Tires & Tubes	4,186
ST453	Vehicle Parts	8,413
ST499	Other Supplies & Materials	1,059
ST511	Vehicle & Equipment Insurance	8,462
ST524	In-Service/Staff Development	158
ST599	Other Charges	1,736
ST701	Administrative Equipment	166
ST729	Transportation Equipment	0
SUBTOTAL SERVICES		<hr/> 79,810
TOTAL TRANSPORTATION		<hr/> 167,897

Informational Note:

Includes bus transportation support costs for fuel, bus parts, tires, insurance, and purchase of new buses and related equipment.

TECHNOLOGY

<u>ASN</u>	<u>Description</u>	2011-12 <u>PERS</u>	2011-12 <u>BUDGET</u>
TC105	Directors/Specialists	1	60,000
TC120	Computer Programmers	0	0
TC138	Instructional Computer Personnel	1	60,219
TC162	Clerical Personnel	0	0
TC189	Other Salaries & Wages	1	55,704
TC201	Social Security		10,907
TC204	State Retirement (Teacher)		10,880
TC205	State Retirement (Classified)		4,891
TC206	Life Insurance		1,189
TC207	Medical Insurance		12,153
TC212	Medicare		2,551
SUBTOTAL SALARY & FRINGES		<u>3</u>	<u>218,493</u>

Informational Note:

Includes salaries and benefits for administrative and instructional support technology positions.

TECHNOLOGY

<u>ASN</u>	<u>Description</u>	2011-12 BUDGET
TC307	Communications	45,019
TC308	Consultants	3,491
TC336	Maintenance & Repair Equipment	4,672
TC355	Travel	269
TC399	Other Contracted Services	1,978
TC411	Data Processing Supplies	193
TC435	Office Supplies	72
TC499	Other Supplies & Materials	3,867
TC524	In-Service/Staff Development	2,134
TC599	Other Charges	22,379
TC701	Administrative Equipment	8,449
TC709	Data Processing Equipment	0
TC722	Regular Instruction Equipment	29,356
SUBTOTAL SERVICES		<hr/> 121,877
TOTAL TECHNOLOGY		<hr/> 340,370

Informational Note:

Includes costs for all telephone and internet charges, computer software and equipment.

REGULAR CAPITAL OUTLAY

<u>ASN</u>	<u>Description</u>	2011-12 BUDGET
CP304	Architects	537
CP308	Consultants	358
CP321	Engineering Services	537
CP707	Building Improvements	15,000
CP724	Site Development	1,253
CP799	Other Capital Outlay	6,229
TOTAL REGULAR CAPITAL OUTLAY		<hr/> 23,914

Informational Note:

Includes costs for projects of a long term nature to maintain or improve school facilities, as well as the architect, consultant, and engineering costs associated with larger projects and projects where code enforcement requires professional architectural or engineering plans.

Summary and Considerations

The purpose of this feasibility study, conducted by Southern Educational Strategies, LLC, was to provide the municipal leadership and citizens of Lakeland with data and information that will assist, and perhaps shape, their decisions regarding the creation of a school district. The study addressed three key components: (a) legal and regulatory issues — statutes, legislation, and applicable court cases as well as findings and past practices regarding the transfer of school facilities, furniture, fixtures, and equipment; (b) operational issues — requirements associated with providing, at a minimum, comparable educational opportunities as compared with existing Shelby County Schools programs; and (c) fiscal issues — analysis of revenue streams and projected expenditures associated with the contemplated school district as well as student enrollment projections. These topics are central to informed and rational decisions.

Legal and regulatory issues: Among the first questions that would be raised by an informed citizenry would relate to (a) the authority of municipalities to create municipal school districts and (b) the transfer of Shelby County School facilities within Lakeland to a Lakeland municipal school district. The first question appears to have been answered through Chapter 1 of the 2011 Public Acts of Tennessee that revived the power of municipalities to create municipal school districts. The very essence of the act presented a Shelby County municipality with the option of choosing not to be served by a massively enlarged system as would result from the merger of the Memphis City Schools and the Shelby County Schools. Instead, the municipality may choose to create its own smaller, localized system. Decades of research and experience support the both the effectiveness and efficiency of such a smaller school system.

Because the recent legislation did not address the second question regarding facilities, an informed legal opinion can be offered. Analyses of pertinent case law, the spirit and essence of Chapter 1, and the history of past practices regarding school facility transfer in Shelby County support the right of a Lakeland municipal school district to receive transfer and control of the school facilities now located within its boundaries and to have that transfer occur without the imposition of costs with respect to those facilities — all of which were built with funds provided by all Shelby County residents.

Operational issues: Operational issues regarding the feasibility of a new municipal school district's ability to offer comparable educational opportunities as compared with existing Shelby County Schools programs are primarily a function of student enrollment. The leaders of the City of Lakeland stated a strong desire to create a school district that places students as the top priority and

permits students to attend their current schools so long as instructional space permits. Therefore, these projected enrollment data for the school within Lakeland includes all current public school students who reside within the City of Lakeland municipal boundaries who are currently zoned to attend Lakeland Elementary School. In addition, the students who reside within the City of Lakeland and who are currently zoned to attend schools located in either Arlington or Bartlett have been included in the projected enrollment calculations for their currently assigned schools in those respective municipalities. Leaders of both the Town of Arlington and the City of Bartlett have indicated a willingness to continue to serve these students from the City of Lakeland under a negotiated Cooperative Educational Contract so long as instructional space permits. Enrollment is the single most important independent variable in the curriculum to be provided, as well as numbers of teachers, administrators, support personnel such as counselors and subject matter experts, office personnel, instructional technology personnel, in addition to other critical areas such as transportation, nutrition services, maintenance and operations, and custodial services. Therefore, another question that would be raised by an informed citizenry would relate to enrollment and the extent to which the contemplated district would have sufficient numbers of students (a critical mass) to make the formation of a district feasible.

Analysis of projected enrollment of students, both district-wide and in each of the respective schools, leads to the opinion that sufficient enrollment would exist. These enrollment data total 819 students and includes students who reside within the municipal boundaries of Lakeland. Six single school municipal school districts similar to Lakeland currently exist in Tennessee. Data for more than 30,000 students drawn from the 2011-2012 Shelby County Schools database were disaggregated by geographic location and then tracked to the proposed new municipal school districts. This very detailed research provided actual 2011-2012 Average Daily Membership (ADM) student enrollment data customized for Lakeland and supports the opinion that a comparable program of educational services can be offered to a diverse student body.

Fiscal issues. No matter how committed the leadership and citizenry may be to the concept of the creation of a smaller, localized system, economics lead to critical questions. What are the projected revenues and revenue sources that might be anticipated for the new district? What are the projected expenditures? Do these numbers suggest feasibility?

The distribution processes for both state and local school district revenue sources are mandated by Tennessee state law. In basic terms, all education revenue must “follow the students” regardless of the number of school districts that may exist within a single Tennessee county. Funds provided by the State of Tennessee Basic Education Program (BEP) are divided based upon each district’s Average

Daily Membership (ADM) totals. All local funds must be divided based upon each district's Average Daily Attendance totals. These methods of funds division are not subject to modification by any local county commission or any local school board.

Revenue generation focused on funds derived from local and state sources that would support the operational components (federal funds and nutrition-related budgetary areas are “pass-through” funds and were not included). The detailed fiscal analysis of state BEP revenues was not just “pro-rated.” Southern Educational Strategies, LLC commissioned complex BEP research by an external consulting firm. The BEP funding research was based on actual Average Daily Membership (ADM) as described above and generated by the Basic Education Program (BEP). In addition to BEP funding, additional revenue analyses of the Shelby County local option sales taxes and Shelby County property taxes were performed. Finally, local revenue analyses were conducted that include the Tennessee State Board of Education required local municipality revenue contribution. The total projected FY2011 revenue for the Lakeland Municipal School District is estimated to be \$6,746,946.

Fiscal issues associated with education expenditures employed detailed templates that present the estimated required operating costs required to create an educational program comparable to that provided by the current Shelby County Schools. The information provided in this study is not a “school budget document”. It is an accurate estimate of projected revenues and expenditures to provide a comparable educational program. Only a municipal school district board of education can determine a school budget, and numerous expenditure savings could be implemented. The total 2011 projected expenditures were estimated to be \$6,739,925. Therefore, in regards to fiscal capacity, projected revenues exceeded projected expenses by \$7021.00 when using a 15 cent minimum local property tax increase in the revenue calculations. **However, a ½ cent increase in the Lakeland local option sales tax would generate approximately \$329,631.00 per year.** A ½ cent local option sales tax increase could reduce the amount of a property tax increase to fund a municipal school district, and it would produce approximately 66% of the local revenue required to meet the Tennessee State Board of Education *spending* rule.

As noted earlier, the expenditure estimates did not include expenses associated with capital improvements.

Subject to the establishment of an adequate local property tax for the City of Lakeland, this very detailed fiscal analysis based on actual 2011-2012 Average Daily Membership (ADM) student enrollment data, customized for Lakeland, supports the opinion that a comparable program of educational services is economically feasible.

The complexity of school system creation leads to a host of considerations that must be weighed by the Lakeland leadership and citizenry. Obviously time is a major factor with only 18 months remaining before the transfer of school administration from the Board of Education of Memphis City Schools to the Shelby County Board of Education in August 2013; many critical events must occur prior to that date. However, in our best professional judgment, we opine that the creation of a municipal school district is feasible and that City of Lakeland (a) Has the capacity to provide a high quality school district for its citizens; (b) Can provide a great educational program without a tremendous tax burden to its citizens while maintaining control over their own system; (c) Can recruit and retain an outstanding group of educators for its district; and (d) May serve as a model for other school systems in the area of best educational practices. Again, time is a critical factor. In order for a seamless transition the City of Lakeland may want to consider the following steps:

1. Mayor and Lakeland Board of Commissioners review and analyze this feasibility study.
2. Conduct citizen information meetings.
3. Mayor and Board of Commissioners reach their decisions and vote in early spring 2012. If majority of the Commissioners vote to create a new Lakeland municipal school district, then file appropriate documents with the Shelby County Election Commission and schedule a City of Lakeland referendum in a special election no later than May 10, 2012. Concurrently, consider a local referendum to increase the Lakeland local option sales tax by ½ cent.
4. If a majority of citizens vote to create a new municipal school district, then:
 - a. File appropriate documents to secure the election of a new Lakeland City Schools Board of Education on November 6, 2012.
 - b. Conduct a search for a superintendent of schools and a vote by the Lakeland Board of Education to employ a superintendent effective January 1, 2013.
 - c. Commence the processes by the superintendent to employ a deputy superintendent, a human resources director and other key personnel.
 - d. Begin to employ all required faculty and staff members with a goal to open the Lakeland City Schools district in August, 2013.

The detailed analyses of legal, operational, and fiscal data regarding the potential creation of a municipal school district in the City of Lakeland lead to the conclusion that formation of such a school district is feasible.

As stated earlier in this report, the Southern Educational Strategies, LLC team strongly believes that all public school operations and decisions should be measured in student benefits. Concerns for the best interests of children have guided the development of and the recommendations found in this study. The authors hope that the data and information provided herein will lead to decisions that serve the best interests of the young people who may receive a public education in this municipality.

Frequently Asked Questions Regarding the Potential Creation of New Municipal School Districts in Shelby County, Tennessee

- 1. Will the new municipal school districts receive a share of the current Shelby County property taxes and Shelby County local option sales taxes allocated for education?*

Yes. As mandated by Tennessee law, all local school districts located in Shelby County must receive their fair share of revenue from both the Shelby County property tax and the Shelby County local option sales tax. The amounts of revenue are based upon the number of students who actually attend schools in the district. This is known as Average Daily Attendance (ADA).

- 2. Would any local municipal property tax revenues provided by a new municipal school district have to be shared with the new unified Shelby County Schools and Memphis City Schools school district?*

No. All local municipal property tax revenues allocated to education will go directly to the new municipal school district.

- 3. Will the “per-pupil expenditure” for the proposed new municipal school districts as projected in this feasibility study exceed the Shelby County Schools (SCS) FY 2012 amount?*

No. The reasons are: (a) the final amount of federal funds revenue allocated to municipal school districts for education programs such as Title I (and other federal programs) cannot be accurately calculated until the students are actually enrolled and eligibility is verified. (b) SCS now has two important revenue sources in its FY 2012 operating budget that municipal school districts will not have at their inception. These revenue sources are: (1) Interest earned on the SCS school district’s fund balance reserves that are invested in the Local Government Investment Pool (LGIP); (2) Actual SCS “reserve funds” in the amount of approximately \$17.2 million that are included as revenue in the SCS FY 2012 operating budget.

- 4. Will funding for current instructional technology programs be included in this study?*

Yes. Adequate expenditure estimates are included in the feasibility study to provide for a comparable instructional technology program including teacher laptop leases, instructional technology staff, and other support areas. Final decisions regarding all school programs will rest with the new municipal school district superintendent and board of education.

5. *How will programs for special education be provided?*

Municipal districts would function under the same Federal laws and State of Tennessee laws, rules and regulations under which all public schools currently operate.

6. *Will the new municipal school districts be able to acquire the current school facilities located in the respective municipalities?*

Because recent legislation (Public Chapter 1 of the 2011 Acts of Tennessee) did not address facility transfer, an informed legal opinion is provided in this feasibility study. Analyses of pertinent case law, the essence of Chapter 1, and the history of past practices regarding school facility transfer in Shelby County support the right of a municipal school district to receive transfer of and control of the school facilities now located within its boundaries and to have that transfer occur without the imposition of costs with respect to those facilities.

7. *If construction of school facilities is required, does the city have authority to issue bonds for the facilities?*

Yes, the municipality has such authority.

8. *Who would appoint the principals and other administrators of the municipal district?*

The superintendent appoints all principals and other school administrators; school board approval is not required.

9. *Could the current teachers, principals, and other employees be retained?*

Yes, they could be retained. However, all personnel will have to apply for employment in the new municipal district. Persons who currently hold tenure in Tennessee could be employed in the new municipal district. However, to secure tenure in the new municipal district, the tenured person must be recommended by the superintendent for tenure in the new municipal district, and the recommendation must be approved by the school board.

10. *Will it be necessary to pay teachers, administrators, and other personnel at the same level or approximately the same level as they are receiving now?*

New municipal school districts will be legally required to provide the same teacher salaries (State Board of Education Rules, Chapter 0520-1-8). Salaries of administrators and other personnel do not have to be provided at the same level.

11. Are transportation and facility improvements included in the feasibility studies?

Adequate expenditure estimates are included for each municipality to provide for comparable student transportation operations either through Cooperative Educational Contracts with other school districts or through outsourcing. Costs of transportation equipment and expenses associated with capital improvements are not included in the operating expense projections. In addition, the Shelby County Schools 2011-15 capital improvement plan provides information regarding potential future capital needs at various schools. The plan is included in an appendix of the study.

12. Would the Shelby County Commission or Shelby County mayor have any control or supervisory authority over the operation of a municipal school district?

No. Municipal school districts will be controlled by their local elected board of education.

13. Could the municipal school district receive accreditation through the Southern Association of Colleges and Schools?

AdvancED (formerly known as Southern Association of Colleges and Schools--SACS) is the accreditation agency for schools in this area. School districts and schools may apply for accreditation through this organization.

14. Would persons who are employed by the municipal school districts continue their retirement through the Tennessee Consolidated Retirement System (TCRS)?

Yes. Teachers and other employees would continue to pay into their retirement program through TCRS, and earned years of service credit would not be lost.

15. Would medical insurance plans for employees continue?

Medical insurance plans would be subject to approval by the board of education of the municipal school district.

16. Would athletic teams continue to compete through the TSSAA?

Yes, they would be members of the Tennessee Secondary School Athletic Association that provides leadership and coordination for the administration of interscholastic athletics.

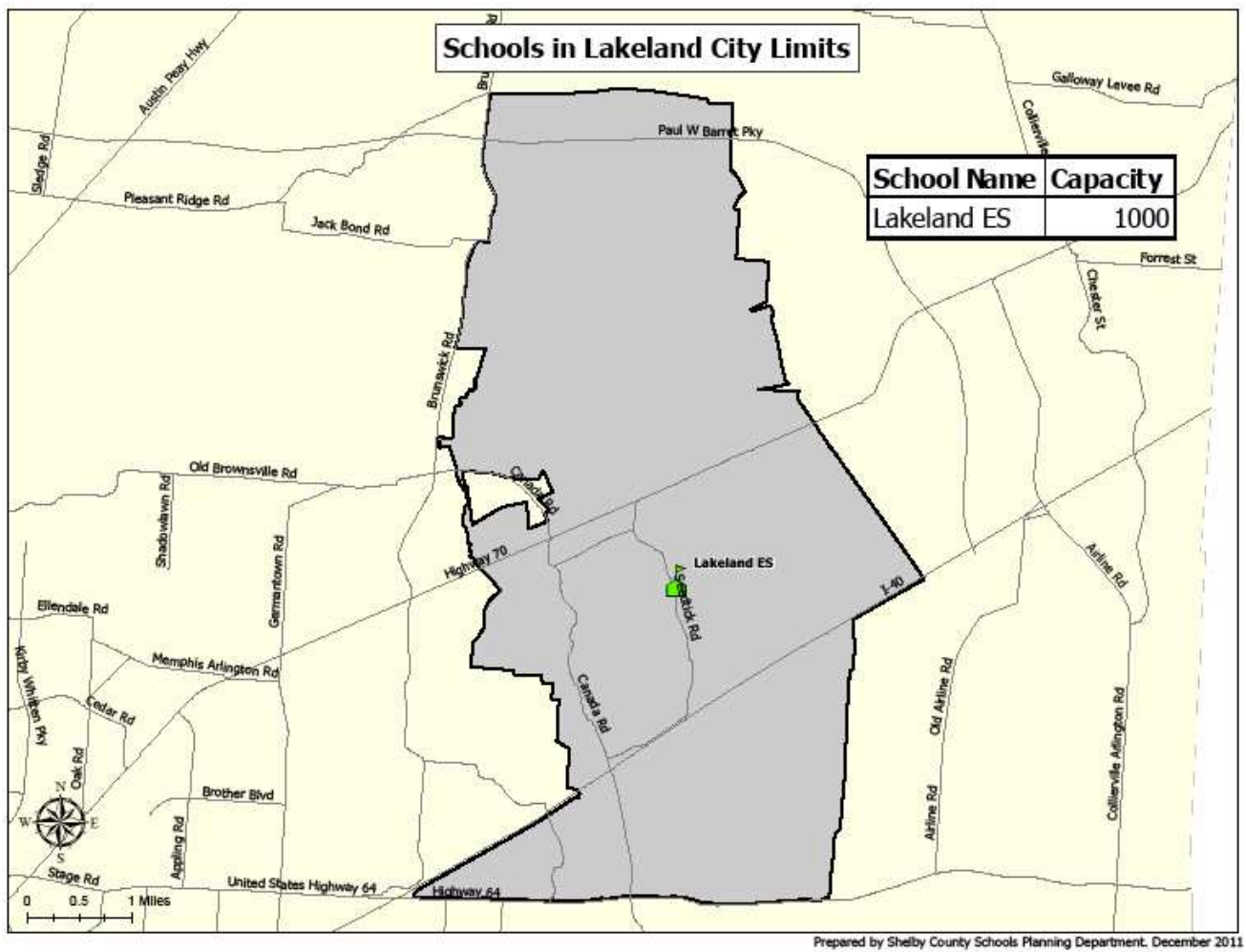
17. Who would employ the municipal school district's superintendent?

The elected municipal school district school board would employ the new district superintendent.

18. Who would employ the teachers and support personnel?

Under Tennessee law, only the superintendent can employ all teachers, principals, other faculty, and staff members.

Appendix A: Lakeland School Map



NOTE: School capacities are calculated without the use of portable classrooms.

Appendix B: Shelby County Schools Five-Year Capital Improvement Plan

SHELBY COUNTY SCHOOLS

FY2011 - FY2015

CAPITAL IMPROVEMENT PROGRAM

Prepared for Shelby County School Board Meeting January 20, 2011

Budget Year	PROJECTS	Estimated Budget*
FY 11	<ul style="list-style-type: none"> Collierville Middle Replacement Middle School Gymnasiums HVAC Retrofit Elementary School Gymnasiums HVAC Retrofit Southwind Elementary Re-roof Highland Oaks Elementary Re-roof (Moved from FY13) Millington High Master Plan Design Phase II, III, IV (Not funded by QSCB I) 	<ul style="list-style-type: none"> \$ 13,000,000.00 \$ 1,500,000.00 \$ 1,500,000.00 \$ 750,000.00 \$ 800,000.00 \$ 950,000.00
	TOTAL	\$ 18,500,000.00
FY 12	<ul style="list-style-type: none"> Funding for Projects FY 12 - FY14 Pending County Commission Approval Millington High Phase II (Vo-Tech) E. A. Harold Elementary Replacement 	<ul style="list-style-type: none"> \$ 7,000,000.00 \$ 13,000,000.00
	TOTAL	\$ 20,000,000.00
FY 13	<ul style="list-style-type: none"> Millington High Phase III (Fine Arts) Instructional Space Renovations Dogwood Elementary - Re-roof Farmington Elementary Germantown Elementary Lowrance Elementary Re-roof Tam O'Sha Elementary Re-roof (Moved from FY 14) 	<ul style="list-style-type: none"> \$ 10,225,000.00 \$ 3,250,000.00 \$ 2,000,000.00 \$ 2,250,000.00 \$ 950,000.00 \$ 900,000.00
	TOTAL	\$ 19,575,000.00
FY 14	<ul style="list-style-type: none"> Millington High Phase IV (Phys. Ed. Gym) Instructional Space Renovations Alcorn Elementary Clintdale Elementary Collierville High Re-roof Houston High Re-roof Shadowlawn HVAC + Re-roof (A) Germantown High Re-roof (C, M, MA) Bolton High Re-roof (Gyms, Main, South) Schilling Farms Middle Re-roof Rivercrest Elementary Re-roof 	<ul style="list-style-type: none"> \$ 2,500,000.00 \$ 2,000,000.00 \$ 2,250,000.00 \$ 2,500,000.00 \$ 1,200,000.00 \$ 1,250,000.00 \$ 600,000.00 \$ 1,000,000.00 \$ 800,000.00 \$ 900,000.00
	TOTAL	\$ 15,000,000.00
FY 15	<ul style="list-style-type: none"> New Area High School Barlow High School Gym Re-Roof Renaissance Academy North Re-Roof Woodstock Middle School Gymnasium Renovation 	<ul style="list-style-type: none"> \$ 55,500,000.00 \$ 150,000.00 \$ 450,000.00 \$ 500,000.00
	TOTAL	\$ 57,600,000.00
	TOTAL FUNDS NEEDED FROM COUNTY COMMISSION	\$ 130,675,000.00
	GRAND TOTAL SCS CIP 2011-2015	\$ 130,675,000.00

* Estimated budgets are stated in 2011 dollars and are subject to inflation.

Appendix C: FY2011 Sales Tax Collections

**Estimate of local revenue generated by a ½ cent local option sales tax increase in
Lakeland, Tennessee**

Annual Value of 1/2 % Local Option Sales Tax					
	Municipalities get 50% of L.O.S.T.	100 % of L.O.S.T.	Sales required to produce @ 2.25%	Amount produced from sales @ .5%	Municipalities get to keep 100% collected above 2.25%
					Increase
Arlington					
Bartlett					
Collierville					
Germantown					
Lakeland	\$ 741,670	\$ 1,483,340	\$ 65,926,219	\$ 329,631	\$ 329,631
Millington					

Appendix D: Lakeland Sales Tax Collections for FY2011

Net Paid->	Lakeland
Jan. 2011	\$ 81,281.45
Feb. 2011	\$ 53,174.58
Mar. 2011	\$ 54,972.63
Apr. 2011	\$ 59,495.05
May. 2011	\$ 57,782.56
Jun. 2010	\$ 59,950.63
Jul. 2010	\$ 64,177.73

Net Paid->	Lakeland
Aug. 2010	\$ 68,391.31
Sep. 2010	\$ 58,311.23
Oct. 2010	\$ 61,393.40
Nov. 2010	\$ 60,930.09
Dec. 2010	\$ 61,809.30
Total	\$ 741,669.96
Average	\$ 61,805.83

State Commission = 1.125%

County Trustee Commission = 1.0%

Appendix E: Duties of a Tennessee Superintendent of Schools

DUTIES OF A TENNESSEE SUPERINTENDENT OF SCHOOLS (aka Director of Schools) AS SPECIFIED IN THE *TENNESSEE CODE ANNOTATED*.

§49-2-301. Director of schools.

(a) Each local board of education is authorized to employ a **director of schools**, as provided for in § 49-2-203, subject to requirements of law. This **director of schools** may be referred to as superintendent, but all references to or duties or powers of the former county superintendents of public instruction shall be deemed to be references to or powers or duties of the **director of schools**. Failure to change a reference to county superintendent to superintendent or **director of schools** shall not be deemed to continue to revive the former office of position of county superintendent, it being the intention in this part to convert the former elected office of superintendent of public instruction to an administrative position filled by the applicable local board of education.

(b) (1) It is the duty of the board of education to assign to its **director of schools** the duty to:

(A) Act for the board in seeing that the laws relating to the schools and rules of the state and the local board of education are faithfully executed;

(B) Attend all meetings of the board and to serve as a member of the executive committee of the board, without additional compensation;

(C) Keep on electronic disks and in well bound books, furnished by the board, a complete and accurate record of the proceedings of all meetings of the board and of the director's official acts;

(D) Keep on electronic disks and in well bound books, furnished by the board and arranged according to the regulations prescribed by the commissioner of education, a detailed and accurate account of all receipts and disbursement of the public school funds;

(E) Issue, within ten (10) days, all warrants authorized by the board for expenditures for public school funds;

(F) Make such recommendations to the board as the director deems for the best interest of the public schools, but in no case shall the director have a vote on any question coming before the board;

(G) Have general supervision of all schools, and visit the schools from time to time, and advise with the teachers and members of the board as to their condition and improvement;

(H) Require the use of the state course of study for all the public schools and the system of promoting pupils through the several grades of the public schools in accordance with regulations of the commissioner, as approved by the state board;

(I) Sign all certificates and diplomas of pupils who complete the courses of study prescribed for the elementary and high schools;

(J) Recommend to the board teachers who are eligible for tenure or notify such teachers of their failure of reelection pursuant to § 49-5-409;

(K) Recommend to the board salaries for teachers in accordance with the salary schedule and the salaries and wages of all other employees nominated by the **director of schools**;

(L) Assign teachers and educational assistants to the several schools;

(M) Require all teachers to submit to the director for record their licenses or authority to teach, given by the state board, and keep a complete record of same;

(N) File all contracts entered into with teachers and employees of the board, before they begin their services in the public schools;

(O) Furnish to teachers or principals the names of pupils belonging to their respective schools, the list to be taken from the census enumeration or other reliable records on file in the **director of schools'** office;

(P) Issue certificates relative to the employment of minors who are enrolled as students in the **director of schools'** district;

(Q) Prepare reports of attendance to be assembled by the director; provided, that the director shall report to the commissioner any failure on the part of any principal or **director of schools** of any school system within the county to make the reports of attendance;

(R) Report to the county trustee and the commissioner, on or before July 1 of each year, the attendance;

(S) Make a written report, quarterly, to the appropriate local legislative body, for the board, of all receipts and expenditures of the public school funds, which accounts shall contain full information concerning the conditions, progress and needs of the schools of the school system and which shall be audited by the appropriate fiscal officer and local legislative body;

(T) Be present at all quarterly and annual settlements of the county trustee with the county mayor covering all school funds arising from state apportionments, county levies and all other sources, and report the director's acts to the **director of schools'** board;

(U) Report to the local legislative body and the commissioner, whenever it appears to the director that any portion of the school fund has been, or is in danger of being, misappropriated or in any way illegally disposed of or not collected;

(V) Make reports to the commissioner of education when requested by the commissioner;

(W) Prepare, annually, a budget for the schools in the **director's school** system, submit the budget to the board for its approval and present it to the county or other appropriate local legislative body for adoption as provided for by charter or private legislative act; provided, that:

(i) The budget shall set forth in itemized form the amount necessary to operate the schools for the scholastic year beginning on July 1, following, or on such date as provided for by charter or private legislative act; and

(ii) Any change in the expenditure of money as provided for by the budget shall first be ratified by the local board and the appropriate local legislative body;

(X) Give the director's full time and attention to the duties of the director's position;

(Y) Deliver to the director's successor all records and official papers belonging to the position. It is a Class C misdemeanor to refuse to deliver the records and files on demand of the director's successor. It is a separate offense for each month during which the director persists in withholding the records and files;

(Z) File with the commissioner of education a copy of the budget adopted by the county or other appropriate local legislative body within ten (10) days after its adoption;

(AA) Furnish to the commissioner a list of the teachers elected by the board and their respective salaries, on forms furnished by the commissioner;

(BB) Grant any licensed employee, or any other person considered as a professional employee, access at any reasonable time to the employee's personnel file or files, whether maintained by the employee's principal, supervisor, director, board or any other official of the school system;

(CC) Give any licensed or professional employee, on request and on payment of reasonable compensation, a copy of specified documents in the employee's personnel file;

(DD) Establish a procedure whereby an updated copy of the rules, regulations and minimum standards of the state board shall be kept on file in an easily accessible place in each school library during normal school hours;

(EE) Within the approved budget and consistent with existing state laws and board policies, employ, transfer, suspend, non-renew and dismiss all personnel, licensed or otherwise, except as provided in § 49-2-203(a)(1) and in chapter 5, part 5 of this title;

(FF) All persons who are employed in a position for which no teaching license is required shall be hired at the will of the **director of schools**. The local board of education shall develop a policy for dismissing such employees;

(GG) (i) The director may dismiss any nontenured, licensed employee under the director's jurisdiction for incompetence, inefficiency, insubordination, improper conduct or neglect of duty, after giving the employee, in writing, due notice of the charge or charges and providing a hearing; provided, that no nontenured, licensed employee under the director's jurisdiction shall be dismissed without first having been given, in writing:

(a) Notice of the charge or charges;

(b) An opportunity for a full and complete hearing before an impartial hearing officer selected by the board;

(c) An opportunity to be represented by counsel;

(d) An opportunity to call and subpoena witnesses;

(e) An opportunity to examine all witnesses; and

(f) The right to require that all testimony be given under oath;

(ii) Factual findings and decisions in all dismissal cases shall be reduced to written form and delivered to the affected employee within ten (10) working days following the close of the hearing;

(iii) Any nontenured, licensed employee desiring to appeal from a decision rendered in favor of the school system shall first exhaust the administrative remedy of appealing the decision to the board of education within ten (10) working days of the hearing officer rendering written findings of fact and conclusions to the affected employee;

(iv) Upon written notice of such appeal being given to the director, the director shall prepare a copy of the proceedings, transcript, documentary and other evidence presented, and transmit the copy of the proceedings, transcript, documentary and other evidence presented within twenty (20) working days of receipt of notice of appeal to the board;

(v) The board shall hear the appeal on the record and no new evidence shall be introduced. The affected employee may appear in person or by counsel and argue why the decision should be modified or reversed. The board may sustain the decision, send the record back if additional evidence is necessary, revise the penalty or reverse the decision. Before any such charges shall be sustained or punishment inflicted, a majority of the membership of the board shall concur in sustaining the charges. The members of the board shall render the decision on the appeal within ten (10) working days after the conclusion of the hearing;

(vi) The **director of schools** shall also have the right to appeal any adverse ruling by the hearing officer to the board under the same conditions as are set out in this subdivision (b)(1)(GG);

(vii) Any party dissatisfied with the decision rendered by the board shall have the right to appeal to the chancery court in the county where the school system is located within twenty (20) working days after receipt of notice of the decision of the board. It shall be the duty of the board to cause to be transmitted the entire record and other evidence in the case to the court. The review of the court shall be de novo on the record of the hearing held by the hearing officer and reviewed by the board;

(HH) All actions of the directors or their designees shall be consistent with the existing board policies, rules, contracts and regulations;

(II) Perform such other official duties as may be prescribed by law;

(JJ) Each LEA shall submit a report to the education committees of the senate and house of representatives by January 1 each year of the number of places that are required in alternative schools within that system to accommodate students in that system placed in alternative schools; and

(KK) Authorize each principal to make staffing decisions regarding administrative personnel for the principal's school.

(2) The records required to be maintained pursuant to this subsection (b) shall be kept in a location that is

secure from the effects of natural disasters, to include fires, earthquakes, tornadoes and other catastrophic events.

(c) It is a Class C misdemeanor for any director to take any other contract under the board of education or to perform any other service for additional compensation, or for any director to act as principal or teacher in any school or to become the owner of a school warrant other than that allowed for the director's service as director. A director who violates this subsection (c) shall also be dismissed from the director's position.

(d) Any **director of schools** who is appointed by the local board of education elected by the general public is only required to have a baccalaureate degree.

HISTORY: Acts 1925, ch. 115, § 6; Shan. Supp., §§ 1487a30-1487a34; mod. Code 1932, §§ 2320a, 2321, 2322-2324; Acts 1943, ch. 36, §§ 1, 2; mod. C. Supp. 1950, § 2320b; Acts 1961, ch. 59, § 1; 1961, ch. 182, § 1; 1963, ch. 13, § 1; modified; Acts 1969, ch. 57, §§ 1-3; 1974, ch. 424, § 1; 1974, ch. 654, §§ 27-30; 1975, ch. 56, § 2; 1977, ch. 196, §§ 3, 4; 1978, ch. 675, § 1; 1979, ch. 99, § 1; 1981, ch. 97, § 1; T.C.A. (orig. ed.), §§ 49-220 -- 49-226; Acts 1984 (1st Ex. Sess.), ch. 6, § 11; 1984 (1st Ex. Sess.), ch. 7, § 80; 1987, ch. 308, § 15; 1989, ch. 55, § 1; 1989, ch. 199, § 2; 1989, ch. 591, § 113; 1990, ch. 948, § 26; 1992, ch. 535, §§ 10-13, 16, 49, 86; 1992, ch. 657, §§ 1, 3; 1994, ch. 929, § 4; 1997, ch. 365, § 3; 1998, ch. 805, § 1; 1998, ch. 826, § 1; 2000, ch. 931, §§ 1, 2; 2001, ch. 211, § 1; 2003, ch. 90, § 2; 2007, ch. 376, § 7; 2011, ch. 335, §§ 1, 2; 2011, ch. 378, § 9.

Appendix F: Lakeland BEP Allocations and Summary of BEP Funding Research

Summary of Research to Estimate Tennessee Basic Education Program (BEP) Funding for Six Proposed Municipal School Districts in Shelby County

Prepared by Basis Policy Research, LLC

Analytic Task 1

With regards to the first analytic task, we expanded the state's actual Excel-based BEP model for fiscal year 2010-2011 to accommodate the calculation of funding costs for 142 school districts in Tennessee (versus the 136 districts presently in operation). This task required not only expanding the model to accommodate the New Districts, but also later confirming that this expansion did not fundamentally alter how the model calculated funding costs for all districts in the state. To that end, and as described in Analytic Task 3, we compared the BEP's actual assumptions and outcomes in fiscal year 2010-2011 to those of our custom model to ascertain whether our simulations of the New Districts unintentionally altered the underlying BEP model or produced funding cost estimates that did not accurately reflect it.

Analytic Task 2

With regards to the second analytic task, we assigned key operating assumptions to the six new districts in our custom model. Specifically, SES disaggregated actual student enrollment data and created a series of operating statistics for the New Districts assuming their active and independent operation during fiscal year 2010-2011. Basis, in turn, used those operating statistics in two different ways.

In some cases, those statistics served as primary "cost assumptions" in the BEP model. For the purpose of this report, cost assumptions refer to district-level operational statistics that are input on a standalone basis into the BEP model to estimate district funding (e.g., the number of district students in grade 9 according to ADM counts).

In other cases, those operating statistics were fed into "cost specifications" published by the state. These cost specifications produced a series of secondary cost assumptions that were then input on a standalone basis into the BEP model. For the purpose of this report, cost specifications refer to how district-level operating statistics are formulaically combined to help estimate district funding (e.g., the number of elementary school assistant principals in a district based on the number of K-8 schools of a certain size in that district).

Analytic Task 3

Lastly, we compared the BEP's cost assumptions, cost specifications, and equalized district outcomes in fiscal year 2010-2011 to those of our custom model to confirm that our simulations did not unintentionally alter the underlying BEP model, produce erroneous or incomplete funding cost estimates, or convert those estimates into inaccurate state and local funding obligations.

Data Sources & Development

Our custom model is based on the actual Excel-based BEP model used by the state to calculate and publish district-level funding allocations. In addition to re-architecting this model to accommodate the New Districts, we also integrated various operating assumptions about them.

As previously noted, these assumptions were based on estimates of key operating statistics assuming the New Districts' active and independent operation during fiscal year 2010-2011. In some cases, those operating

statistics served as primary, standalone cost assumptions in the BEP model (e.g., the number of district students in grade 9 according to ADM counts). In other cases, they were combined in cost specifications published by the state to produce secondary, standalone cost assumptions (e.g., the number of elementary school assistant principals in a district based on the number of K-8 schools of a certain size in that district).

The BEP model itself is driven largely by district-specific ADM counts, or the product of those ADM counts and various state-wide cost assumptions. For instance, the cost of duty free lunches is calculated in the BEP model as the product of each district's total student population (its ADM count) and \$10.25 (the statewide cost assumption). For the most part, then, our hypothetical funding costs for the New Districts are a function of their actual ADM counts and the same statewide cost assumptions imposed by the BEP model on the other 136 districts in the state in fiscal year 2010-2011.

Given the BEP's general reliance on statewide cost assumptions, our custom model required only 36 unique inputs per district to calculate and equalize district funding costs (all of which represented or involved ADM counts). Of those 36 unique inputs, 27 represented primary cost assumptions, and the remaining 9 were secondary cost assumptions derived from state-published cost specifications.

Instructional and Non-classroom Personnel

According to the state-published BEP Blue Book for fiscal year 2010-2011, the cost specifications for certain instructional and non-classroom personnel rely on the within-district count of schools by various grade-span and student population combinations. These instructional and non-classroom personnel include total principals, assistant principals, librarians, library assistants, and school secretarial support.

To facilitate our count of these personnel in the New Districts, SES produced a schedule reporting the school name, grade span, and total ADM for the various schools in each new district. We then fed those statistics into the state's relevant cost specifications to calculate each district's full-time equivalent (FTE) count of principals, assistant principals, total librarians, library assistants, and system secretarial support.

Principals

The total number of principals in a district is calculated as the sum of:

- 0.5 FTE principal for each district school with an ADM count of less than 225 students; and
- 1.0 FTE per school of at least 225 students.

Elementary schools of less than 100 students are not allocated a principal.

Elementary School Assistant Principals

The total number of elementary school assistant principals in a district is calculated as the sum of:

- 0.5 FTE assistant principal for each district K-8 school with an ADM count of 660-879 students;
- 1.0 FTE per K-8 school of 880-1,099 students;
- 1.5 FTEs per K-8 school of 1,100-1,319 students; and
- 2.0 FTEs per K-8 school of at least 1,320 students.

Secondary School Assistant Principals

The total number of secondary school assistant principals in a district is calculated as the sum of:

- 0.5 FTE assistant principal for each district 9-12 school with an ADM count of 300-649 students;
- 1.0 FTE per 9-12 school of 659-999 students;
- 1.5 FTEs per 9-12 school of 1,000-1,249 students; and
- 2.0 FTEs per 9-12 school of at least 1,250 students, with 1 additional FTE for each additional 250 students above 1,250 total students in that school.

Elementary School Librarians (and Assistants)

The total number of elementary librarians in a district is calculated as the sum of:

- 0.5 FTE librarian for each district K-8 school with an ADM count of less than 265 students;
- 1.0 FTE per K-8 school of 265-439 students;
- 1.0 FTE per K-8 school of 440-659 students, with 0.5 FTE assistant librarian per school; and
- 1.0 FTE per K-8 school of at least 660 students, with 1.0 FTE assistant librarian per school.

Secondary School Librarians (and Assistants)

The total number of secondary librarians in a district is calculated as the sum of:

- 0.5 FTE librarian for each district 9-12 school with an ADM count of less than 300 students;
- 1.0 FTE per 9-12 school of 300-999 students;
- 2.0 FTEs per 9-12 school of 1,000-1,499 students; and
- 2.0 FTEs per 9-12 school of at least 1,500 students, with 1 FTE library assistant for each additional 750 students above 1,500 total students in that school.

School Support Secretaries

The total number of school support secretaries in a district is calculated as the sum of:

- 0.5 FTE secretary for each district school with an ADM count of less than 225 students;
- 1.0 FTE per school of 225-374 students; and
- 1.0 FTE per school of at least 375 students, with 1 additional FTE for each additional 375 students above 375 total students in that school.

Other Assumptions

We made additional assumptions of import.

First, the equalization component of the BEP – the process by which the division of funding costs between state and local obligations is further adjusted to reflect differing economic realities across Tennessee – is a county-level model. The state estimates the capacity of communities to finance education at the county level, and then uniformly assigns each county’s resultant fiscal capacity index to all of the school districts operating within its boundaries. Those estimates ultimately dictate whether districts need to finance more or less of education than the BEP’s baseline division of costs between state and local obligations. Accordingly, we have assigned Shelby County’s fiscal capacity estimate in fiscal year 2010-2011 to the New Districts, just as the state would have done had those districts been operating actively and independently in the school year.

Second, the BEP model includes a similar equalization calculation whereby the state adjusts total funding costs in districts in which the cost of living is greater than the statewide average. This Cost Differential Factor (or “CDF”) is applied only to salary components of the BEP, and is also a county-level model. Accordingly, we have assigned Shelby County’s CDF in fiscal year 2010-2011 to the New Districts, just as the state would have done had those districts been operating actively and independently in the school year.

Results

We present our estimates of the funding costs and revenue for Arlington, Bartlett, Collierville, , Lakeland, and Millington Schools, respectively, in the following exhibits.

Summary of Estimated BEP Program Allocations

These exhibits comprise tables that emulate the format of the BEP Program Allocations furnished to district superintendents each year by the state. In addition to estimates of each district’s instructional, classroom, and non-classroom funding costs, they also report the district’s assumed:

- Total ADM;
- Career and technical ADMs served;
- Special education ADMs identified and served; and
- Final fiscal capacity index (for equalization purposes).

Lakeland Schools
Tennessee Basic Education Program (BEP)
Estimated Allocations Under Simulated FY 2010-2011 Model
Estimates as of December 9, 2011

Instructional Funding

Total Full Funding - Instructional	\$2,993,031
Less: Required Local Matching Funds 23.84%	868,769
State Share of Instructional Funding 76.06% 	(1) \$2,124,272

Classroom Funding

Total Full Funding - Classroom	\$704,215
Less: Required Local Matching Funds 20.03%	166,395
State Share of Classroom Funding 79.97% 	(2) \$537,822

Non-Classroom Funding

Total Full Funding - Non-Classroom	\$1,417,518
Less: Required Local Matching Funds 34.40%	755,742
State Share of Non-Classroom Funding 65.60% 	(3) \$661,777

Total State BEP Funding Allocation	(1) + (2) + (3)	\$3,323,871
Total Required Local Matching Funds		\$1,790,894
Total BEP Funding - State and Local		\$5,114,765

Additional Information

Student Counts (Average of First Two 20-day Counts)

Total ADMs	818
Career and Technical ADMs Served	0
Special Education ADMs Identified and Served	196
Fiscal Capacity Index	16.65%

December 2011

Appendix G: Estimated New School Construction Costs

Estimated New School Construction Costs

The legal analyses included in this feasibility study contain evidence from extensive case law and Tennessee statutes that, if new municipal school districts are created within Shelby County, the existing school facilities, furniture, fixtures, and equipment should be transferred at no cost to the new municipal school districts.

In addition to the described legal analyses, an on-site review of the audited annual financial statements of the Shelby County Board of Education from the fiscal years 1965 through 2010 was conducted by Watkins Uiberall, PLLC, Certified Public Accountants. These reviews revealed no evidence of any direct payments from the Board of Education of the Memphis City Schools to the Shelby County Board of Education for more than 44 school facilities transferred to Memphis City Schools during the 1965-2010 period. The full Watkins Uiberall report is found within the study.

However, the following new school construction cost data are provided to assist any municipality that may chose to construct new school facilities as a result of student enrollment increases.

These data were provided through local architects, engineers, and general contractors experienced in school construction and using the current Shelby County Schools' guidelines and building design standards. The data are conservative design and construction estimates as of 2011, exclusive of land costs and owner provided equipment. The estimates are for schools of appropriate size to serve the following student enrollment levels: Elementary 750; Middle 1000; High School 1500.

Budget Report			
New School Construction			
9/7/2011			
School Type	Approx. S.F.	Mean cost per S.F.	Cost
Elementary School			
Construction Budget Cost	80,000	\$103.00	\$8,240,000.00
Architectural and Engineering Fee		5.50%	\$453,200.000
Fixtures Furnishings and Equipment			
Site	10 -12 acres required		
Total			\$8,693,200.000
Middle School			
Construction Budget Cost	114,000	\$101.00	\$11,514,000.00
Architectural and Engineering Fee		5.50%	\$633,270.000
Fixtures Furnishings and Equipment			
Site	15-20 acres required		
Total			\$12,147,270.00
High School			
Construction Budget Cost	240,000	\$105.00	\$25,200,000.00
Architectural and Engineering Fee		5.00%	\$1,260,000.000
Fixtures Furnishings and Equipment			
Site	50-70 acres required		
Other Soft Cost			
Total			\$26,460,000.00
* Allowance Items included in construction cost			
3% contingency			
Testing removal of unsuitable soil			
Placement of engineered fill			
Interior and exterior signage			

Appendix H: Public Chapter 1



State of Tennessee
PUBLIC CHAPTER NO. 1

SENATE BILL NO. 29

By Morris

Submitted for: House Bill No. 51

By Todd, Lollar, White, McManus, Coley

AN ACT to amend Tennessee Code Annotated, Title 49, Chapter 2, relative to administration of local education agencies.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1 Tennessee Code Annotated, Section 49-2-502, is amended by designating the current language as subsection (a) and by adding the following new language as subsection (b):

(b)(1) Notwithstanding the provisions of subsection (a) or any other law to the contrary, if the proposed transfer of the administration of the schools in the special school district to the county board of education would result in an increase in student enrollment within the county school system of one hundred percent (100%) or more, and if a majority of the voters who cast votes in the referendum vote in favor of the transfer, then a comprehensive transition plan shall be developed, and the transfer shall take effect at the beginning of the third full school year immediately following completion of the election results.

(2) The comprehensive transition plan shall be developed by a transition planning commission. The transition plan shall consider and provide for each of the matters set forth in § 49-2-120(f) and § 49-2-120G. Prior to its implementation, the transition plan shall be submitted to the department of education for review and comments. The transition planning commission shall consist of twenty-one (21) members, as follows:

(A) The county mayor, the chair of the county board of education and the chair of the board of education of the special school district shall serve as ex officio members of the commission.

(B) The county mayor, the chair of the county board of education and the chair of the board of education of the special school district shall each appoint five (5) competent citizens to serve as members of the transition planning commission; and

(C) The governor, the speaker of the senate and the speaker of the house of representatives shall jointly appoint three (3) competent citizens to also serve as members of the transition commission.

(3) From and after the effective date of the transfer of the administration of the schools in the special school district to the county board of education, the restrictions imposed on the creation of municipal school districts, in § 49-2-11(b), and special school districts, in § 49-2-501(b)(3), shall no longer apply in such county.

SECTION 2. This act shall take effect on becoming law, the public welfare requiring it, and shall apply to any proposed § 49-2-502 transfer pending or after such date.

**Appendix I: Tennessee Department of Education State Mandated Minimum Salary Schedule for
Superintendents/Directors**

**TENNESSEE DEPARTMENT OF EDUCATION
STATE MANDATED MINIMUM SALARY SCHEDULE
SUPERINTENDENTS/DIRECTORS
Effective July 1, 2009**

YEARS OF EXPERIENCE		1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16
DESCRIPTION OF TRAINING																	
<u>DOCTORATE</u>																	
County Superintendents/Directors:		51,965	53,100	54,255	55,395	56,530	57,665	58,810	59,950	61,100	62,225	63,505	64,645	65,780	66,920	68,060	69,200
City/Special School District Superintendents/Directors:		36,380	37,140	37,895	38,795	39,550	40,430	41,200	41,960	42,845	43,605	44,560	45,250	46,010	46,770	47,600	48,420
<u>EDUCATION SPECIALIST</u>																	
County Superintendents/Directors:		40,055	50,100	51,335	52,480	53,610	54,750	55,910	57,040	58,305	59,440	60,590	61,725	62,965	64,010	65,150	66,285
City/Special School District Superintendents/Directors:		34,350	35,110	35,875	36,700	37,520	38,405	39,100	39,925	40,810	41,570	42,335	43,225	43,975	44,865	45,630	46,395
<u>MASTERS + 36 SEMESTER HOURS</u>																	
County Superintendents/Directors:		48,420	49,500	50,700	51,945	53,100	54,255	55,395	56,530	57,665	58,810	59,950	61,100	62,225	63,505	64,645	65,780
City/Special School District Superintendents/Directors:		33,970	34,730	35,485	36,380	37,140	37,895	38,795	39,550	40,430	41,200	41,960	42,845	43,605	44,560	45,250	46,010
<u>MASTERS</u>																	
County Superintendents/Directors:		47,285	48,420	49,500	50,700	51,945	53,100	54,255	55,395	56,530	57,665	58,810	59,950	61,100	62,225	63,505	64,645
City/Special School District Superintendents/Directors:		33,095	33,970	34,730	35,485	36,380	37,140	37,895	38,795	39,550	40,430	41,200	41,960	42,845	43,605	44,560	45,250
<u>BACHELOR</u>																	
County Superintendents/Directors:		40,140	47,285	48,420	49,500	50,700	51,945	53,100	54,255	55,395	56,530	57,665	58,810	59,950	61,100	62,225	63,505
City/Special School District Superintendents/Directors:		32,315	33,095	33,970	34,730	35,485	36,380	37,140	37,895	38,795	39,550	40,430	41,200	41,960	42,845	43,605	44,560

Notes:

- (1) To the superintendents' state mandated minimum base salary add: \$3.64 per ADM based on the following steps:
 - (a) ADM is rounded to the nearest 100 up to a maximum of 5,500.
 - (b) Deduct 300 from rounded ADM to determine eligible ADM.
- (2) Superintendents' Total Compensation:
 - (a) Is defined as all compensation paid by LEA, regardless of source or purpose.
 - (b) Must be equal to or greater than the amount determined by the State Mandated Minimum Salaries.
 - (c) Systems with salaries above the State Mandated Minimum Salaries are not required to raise salaries.

Appendix J: 2011 Report Card

MEMPHIS CITY SCHOOLS

Teacher and Administrator Credentials - Level of College Completed¹

	<i>PHD EDS MS+45 MS BS/BA 3 Yrs. 2 Yrs. 1 Yr. 0 Yrs. Total</i>				
<i>Female</i>	90	428	1,181	2,200	2,036
				44	5,979
<i>Male</i>	45	85	255	564	755
				2	88
<i>Gender Not Reported</i>				5	14
					19
					7,791

SHELBY COUNTY SCHOOLS

Teacher and Administrator Credentials - Level of College Completed²

	<i>PHD EDS MS+45 MS BS/BA 3 Yrs. 2 Yrs. 1 Yr. 0 Yrs. Total</i>				
<i>Female</i>	35	94	570	882	985
				8	2,575
<i>Male</i>	17	20	127	211	216
				19	610
<i>Gender Not Reported</i>				1	0
				5	6
					3,192

¹ 2011 Report Card reprinted as published by Tennessee Department of Education at <http://edu.reportcard.state.tn.us/pls/apex/f?p=200:123406022712576500>

² 2011 Report Card reprinted as published by Tennessee Department of Education at <http://edu.reportcard.state.tn.us/pls/apex/f?p=200:123406022712576500>

Appendix K: State Mandated Minimum Licensed Instructional Personnel Salaries

**TENNESSEE DEPARTMENT OF EDUCATION
BASIC EDUCATION PROGRAM SALARY SCHEDULE
LICENSED INSTRUCTIONAL PERSONNEL
Effective July 1, 2009**

YEARS OF EXPERIENCE	0	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20
DESCRIPTION OF TRAINING																					
DOCTORATE																					
Teachers & Principals	39,165	39,725	39,725	40,390	41,225	42,085	43,240	44,160	45,500	46,485	46,660	47,635	47,855	48,885	49,660	50,115	50,115	51,420	51,620	51,955	51,955
System-Wide Personnel	40,115	40,685	40,685	41,350	42,230	43,100	44,180	45,215	46,580	47,600	47,775	48,805	49,890	50,665	50,235	51,320	51,320	52,245	52,245	53,105	53,105
EDUCATION SPECIALIST																					
Teachers & Principals	36,835	36,590	36,590	37,185	37,940	38,725	38,795	40,650	41,860	42,770	42,945	43,865	44,050	44,990	45,175	46,150	46,150	46,965	46,965	47,795	47,795
System-Wide Personnel	37,310	37,885	37,885	38,585	39,290	40,110	41,200	42,085	43,255	44,285	44,470	45,420	45,615	46,580	46,785	47,780	47,780	48,630	48,630	49,495	49,495
MASTER'S + 30 SEMESTER HOURS																					
Teachers & Principals	34,615	35,180	35,180	35,735	36,445	37,225	38,225	39,040	40,185	41,050	41,240	42,130	42,290	43,210	43,385	44,305	44,305	45,080	45,080	45,870	45,870
System-Wide Personnel	35,860	36,445	36,445	37,030	37,760	38,580	39,605	40,445	41,625	42,535	42,720	43,650	43,810	44,785	44,940	45,900	45,900	46,700	46,700	47,520	47,520
MASTER																					
Teachers & Principals	32,490	33,060	33,060	33,585	34,270	35,015	35,960	36,740	37,825	38,645	38,825	39,665	39,835	40,700	40,895	41,770	41,770	42,580	42,580	43,235	43,235
System-Wide Personnel	33,720	34,320	34,320	34,860	35,575	36,350	37,325	38,135	39,285	40,125	40,295	41,180	41,340	42,250	42,440	43,360	43,360	44,165	44,165	44,875	44,875
BACHELOR																					
Teachers & Principals	29,215	29,760	29,760	30,220	30,895	31,445	32,275	32,955	33,915	34,630	34,780	35,520	35,695	36,440	36,610	37,390	37,390	38,015	38,015	38,655	38,655
System-Wide Personnel	30,455	31,020	31,020	31,585	32,120	32,780	33,650	34,355	35,355	36,095	36,260	37,040	37,215	37,990	38,165	38,980	38,980	39,630	39,630	40,295	40,295
THREE YEARS OF COLLEGE	24,840	25,295	25,295	25,690	26,195	26,725	27,420	28,015	28,825	29,430	29,565	30,285	30,345								
TWO YEARS OF COLLEGE	24,100	24,560	24,560	24,930	25,420	25,945	26,620	27,195	27,975	28,570	28,695	29,310	29,450								
ONE YEAR OF COLLEGE	23,375	23,815	23,815	24,175	24,650	25,160	25,810	26,360	27,125												
0 YEAR OF COLLEGE	22,645	23,065	23,065	23,415	23,875	24,370	25,015	25,535	26,280												

Footnotes:

- Note 1:** See State Board of Education Rules, Regulations and Minimum Standards 0520-2-6-.01(15), Advanced Academic Training Acceptable for Purposes of Salary Rating on the License, regarding master's degree, master's degree plus 30 semester hours, education specialist's degree, and doctor's degree designations.
- Note 2:** A principal shall receive \$8.00 per month for ten months for each full-time teacher under his/her supervision up to and including 10 full-time teachers.
- Note 3:** Occupational education teachers with less than a bachelor's degree who hold the occupational education license shall be paid on a bachelor's degree.
- Note 4:** For a supervising teacher of instruction, add \$20.00 for each teacher supervised to a maximum of 50 teachers. Less than full-time will be reduced proportionally.
- Note 5:** For a supervising teacher of instruction with less than a bachelor's degree, rate the person as though they hold a bachelor's degree.

Appendix L: 2011–2012 Shelby County Schools Salary Schedule

SHELBY COUNTY SCHOOLS
TEACHER SALARY SCHEDULE
2011-2012

OTHER YEARS SERVICE	STEP	TEACHERS			
		<u>B. A.</u>	<u>M. A.</u>	<u>M.A.+45</u>	<u>EDS</u>
0	0	41,062	44,392	47,838	50,294
1	1	41,900	45,428	49,040	51,444
2	2	42,921	46,423	50,183	52,584
3	3	43,872	47,382	51,302	53,701
4	4	44,766	48,354	52,530	54,986
5	5	45,553	49,181	53,498	55,953
6	6	46,672	50,368	54,872	57,327
7	7	47,245	50,977	55,417	58,208
8	8	48,174	51,990	56,892	59,305
9	9	48,616	52,475	57,581	60,410
10+	10	49,590	53,534	58,762	61,193
	11	50,939	54,966	60,530	62,971
	12	52,164	56,187	61,860	64,275
	13	53,409	57,392	63,329	65,799
	14	54,570	58,683	64,641	67,049
	15	55,817	59,864	66,068	68,509
	16	56,374	60,422	66,627	69,068
	17	56,932	60,979	67,184	69,624
	18	57,717	61,046	68,178	70,668

Board Approved
07/23/11

Appendix M: 2011–2012 Memphis City Schools Salary Schedule

Appendix N: Tenn. Code Ann. § 49-2-203 - Duties and Powers of the Board Education

Tenn. Code Ann. § 49-2-203. Duties and powers.

(a) It is the duty of the local board of education to:

(1) Elect, upon the recommendation of the director of schools, teachers who have attained or are eligible for tenure and fix the salaries of and make written contracts with the teachers;

(A) No individual shall be elected to an interim contract unless the individual so elected is to fill a vacancy created by a leave of absence as set forth in § 49-5-702;

(B) All contracts with educational assistants will be for nonteaching positions;

(C) Educational assistants shall be subject to direct supervision of certificated teachers when directly involved in the instructional program;

(D) No member of any local board of education shall be eligible for election as a teacher or any other position under the board carrying with it any salary or compensation;

(2) Manage and control all public schools established or that may be established under its jurisdiction;

(3) Purchase all supplies, furniture, fixtures and material of every kind through the executive committee;

(A) All expenditures for such purposes may follow the prescribed procedures of the LEA's respective local governing body, so long as that body, through its charter, private act or ordinance has established a procurement procedure that provides for advertisement and competitive bidding, except that, if a newspaper advertisement is required, it may be waived in case of emergency. If the LEA chooses not to follow the local governing body's purchasing procedures, all expenditures for such purposes estimated to exceed ten thousand dollars (\$10,000) or more shall be made on competitive bids, which shall be solicited by advertisement in a newspaper of general circulation in the county, except that the newspaper advertisement may be waived in the event of emergency. School districts that have a purchasing division may use a comprehensive vendor list for the purpose of soliciting competitive bids; provided, that the vendors on the list are given notice to bid; and provided, further, that the purchasing division shall periodically advertise in a newspaper of general circulation in the county for vendors and shall update the list of vendors following the advertisement;

(B) If the LEA chooses not to follow the local governing body's purchasing procedures, all purchases of less than ten thousand dollars (\$10,000) may be made in the open market without newspaper notice, but shall, whenever possible, be based upon at least three (3) competitive bids;

(C) (i) For construction of school buildings or additions to existing buildings, the LEA may follow prescribed procedures of its respective local governing body, so long as that body, through its charter, private act or ordinance has established a procurement procedure that provides for advertisement and

competitive bidding. If the LEA chooses not to follow the local governing body's procedure, the board shall contract, following open bids, for the construction of school buildings or additions to existing buildings, the expenditure for which is in excess of ten thousand dollars (\$10,000). Public notice shall be given at least ten (10) days in advance of accepting bids for the construction, and the board shall award the contract to the lowest and best bidder. Whether following local governing body procedures or those set forth in this subdivision (a)(3)(C)(i), in the event no bid is within the budgetary limits set by the board for the construction, the board may negotiate with the lowest and best bidder to bring the cost of the construction within the funds available, with the approval of the commissioner of education;

(ii) Construction management services that are provided for a fee and that involve preconstruction and construction administration and management services are deemed to be professional services and may be performed by a qualified person licensed under title 62, chapter 6. Construction management services are to be procured for each project through a written request for proposals process through advertisement made pursuant to subdivision (a)(3)(A). A board may include, in a single written request for proposal process, new school construction or renovation projects at up to three (3) sites, if construction at all sites will occur at substantially the same time. The written request for proposals process will invite prospective proposers to participate and will indicate the service requirements and the factors used for evaluating the proposals. The factors shall include the construction manager's qualifications and experience on similar projects, qualifications of personnel to be assigned to the project, fees and costs or any additional factors deemed relevant by the procuring entity for procurement of the service. Cost is not to be the sole criterion for evaluation. The contract for such services shall be awarded to the best qualified and responsive proposer. A construction manager is prohibited from undertaking actual construction work on a project over which the construction manager coordinates or oversees the planning, bid or construction phases of the project, except in instances where bids have been solicited twice and no bids have been submitted. If the construction manager can document that a good faith effort was made in each bid solicitation to obtain bids and no bids were received, then the construction manager may perform the construction work at a price agreed upon by the construction manager, the architect and the owner of the project. A school system, at its own discretion, may perform work on the project with its own employees, and may include the coordination and oversight of this work as part of the services of the construction manager. Sealed bids for actual construction work shall be opened at the bid opening and the names of the contractors and their bid amounts shall be announced;

(iii) Construction management agent or advisor services for the construction of school buildings or additions to existing buildings in accordance with subdivision (a)(3)(C)(ii) may be performed by:

(a) A general contractor licensed in Tennessee pursuant to title 62, chapter 6; provided, that none of such services performed by a general contractor involve any of the services exempt from the requirements of title 62, chapter 6 as "normal architectural and engineering services" under § 62-6-102(4)(B) or (C), unless, with regard to the performance of any services defined as normal architectural and engineering services, the general contractor is also licensed as an architect or engineer under title 62, chapter 2; or

(b) An architect or an engineer licensed pursuant to title 62, chapter 2; provided, that none of such services performed by an architect or engineer involve any of the services required to be performed by a contractor within the definition of "contractor" under § 62-6-102, unless with regard to the performance of any services included within the definition of contractor, the architect or engineer is also licensed as a contractor under title 62, chapter 6.

(iv) Construction work that is under the coordination and oversight of a construction manager shall be procured through competitive bids as provided in this subsection (a);

(D) No board of education shall be precluded from purchasing materials and employing labor for the construction of school buildings or additions to school buildings;

(E) Subdivisions (a)(3)(A), (B) and (D) apply to local boards of education of all counties, municipalities and special school districts; provided, however, that subdivisions (a)(3)(A) and (B) shall not apply to purchases by or for a county's or metropolitan government's board of education in counties with a population of not less than two hundred thousand (200,000), according to any federal census, so long as the county, through county or metropolitan government charter, private act, or ordinance, establishes a procedure regarding purchasing that provides for advertisement and competitive bidding and sets a dollar amount for each purchase requiring advertisement and competitive bidding; and provided, further, that purchases of less than the dollar amount requiring advertisement and competitive bidding shall, wherever possible, be based upon at least three (3) competitive bids. Subdivision (a)(3)(C) applies to county and municipal boards of education;

(4) Order warrants drawn on the county trustee on account of the elementary and the high school funds, respectively;

(5) Visit the schools whenever, in the judgment of the board, such visits are necessary;

(6) Except as otherwise provided in this title, dismiss teachers, principals, supervisors and other employees upon sufficient proof of improper conduct, inefficient service or neglect of duty; provided, that no one shall be dismissed without first having been given in writing due notice of the charge or charges and an opportunity for defense;

(7) Suspend, dismiss or alternatively place pupils, when the progress, safety or efficiency of the school makes it necessary or when disruptive, threatening or violent students endanger the safety of other students or school system employees;

(8) Have enumerated the scholastic population of the local school district in May of every odd-numbered year;

(9) Provide proper record books for the director of schools, and should the appropriate local legislative body fail or refuse to provide a suitable office and sufficient equipment for the director of schools, the local board of education may provide the office and equipment out of the elementary and the high

school funds in proportion to their gross annual amounts;

(10) (A) (i) Require the director of schools and chair of the local board to prepare a budget on forms furnished by the commissioner, and when the budget has been approved by the local board, to submit it to the appropriate local legislative body;

(ii) No LEA shall submit a budget to the local legislative body that directly or indirectly supplants or proposes to use state funds to supplant any local current operation funds, excluding capital outlay and debt service;

(B) (i) Notwithstanding any other law to the contrary, for any fiscal year, if state funding to the county for education is less than state funding to the county for education during the fiscal year 1990-1991 or less than the previous fiscal year's state funding to the county for education, except that a reduction in funding based on fewer students in the county rather than actual funding cuts shall not be considered a reduction in funding for purposes of this provision, local funds that were appropriated and allocated to offset state funding reductions during any previous fiscal year are excluded from this maintenance of local funding effort requirement;

(ii) It is the intent of subdivision (a)(10)(B)(i) to allow local governments the option to appropriate and allocate funds to make up for state cuts without being subject to a continuation of funding effort requirement as to those funds for any year during which the state reinstates the funding or restores the previous cuts, and during any subsequent year should the state fail to restore the funding cuts;

(C) Subdivision (a)(10)(A)(ii) shall not apply to a newly created LEA in any county where the county and city schools are being combined for a period of three (3) years after the creation of the LEA. The county board of education shall submit its budget to the county legislative body no later than forty-five (45) days prior to the July term or forty-five (45) days prior to the actual date the budget is to be adopted by the county legislative body if the adoption is scheduled prior to July 1;

(11) Prepare, or have prepared, a copy of the minutes of each meeting of the board of education, and mail a copy of the minutes no more than thirty (30) days after the board meeting or at the time they are mailed to or otherwise provided to members of the board, if such is earlier, to the president of each local education association. Any subsequent corrections, modifications or changes shall be distributed in the same manner;

(12) Adopt and enforce, in accordance with guidelines prescribed by the state board of education pursuant to § 49-6-3002, minimum standards and policies governing student attendance, subject to availability of funds;

(13) Develop and implement an evaluation plan for all certificated employees in accordance with the guidelines and criteria of the state board of education, and submit the plan to the commissioner for approval;

(14) (A) Notwithstanding any other public or private act to the contrary, employ a director of schools under a written contract of up to four (4) years' duration, which may be renewed. No school board, however, may either terminate, without cause, or enter into a contract with any director of schools during a period extending from forty-five (45) days prior to the general school board election until thirty (30) days following the election. Any vacancy in the office of the director that occurs within this period shall be filled on a temporary basis, not extending beyond sixty (60) days following the general school board election. An option to renew a contract that exists on May 22, 2001, may be exercised within the time period set out in this subdivision (a)(14)(A). Any such person transferred during the term of the person's contract shall not have the person's salary diminished for the remainder of the contract period. The board may dismiss the director for cause as specified in this section or in chapter 5, part 5 of this title, as appropriate. The director of schools may be referred to as the superintendent and references to or duties of the former county superintendents shall be deemed references to or duties of the director of schools employed under this section. The school board is the sole authority in appointing a director of schools;

(B) Each school board shall adopt a written policy regarding the method of accepting and reviewing applications and interviewing candidates for the position of director of schools;

(C) No school board shall extend the contract of a director of schools without giving notice of the intent to do so at least fifteen (15) calendar days prior to the scheduled meeting at which action shall be taken. Further, except in cases concerning allegations of criminal or professional misconduct, no school board shall terminate the contract or remove a director of schools from office without giving notice at least fifteen (15) calendar days prior to the scheduled meeting at which action shall be taken. Notice of extension or termination of a contract of a director of schools shall include the date, time and place of the meeting, and shall comport with all other requirements of §§ 8-44-103 and 49-2-202(c)(1). The proposed action shall be published as a specific, clearly stated item on the agenda for the meeting. Such item, for the convenience of the public attending the meeting, shall be the first item on the agenda; and

(15) Adopt policies on the employment of substitute teachers. The policies shall, at a minimum, address qualifications and training and shall ensure substitute teachers are subject to investigation pursuant to § 49-5-413. The policies shall also prohibit hiring any substitute teacher whose records with the state department of education indicate a license or certificate currently in revoked status.

(b) The local board of education has the power to:

(1) Consolidate two (2) or more schools whenever in its judgment the efficiency of the schools would be improved by the consolidation;

(2) Require school children and any employees of the board to submit to a physical examination by a competent physician whenever there is reason to believe that the children or employees have tuberculosis or any other communicable disease, and upon certification from the examining physician that the children or employees have any communicable disease, to exclude them from school or service

until the child or children, employer or employers, employee or employees furnish proper certificate or certificates from the examining physician or physicians showing the communicable disease to have been cured;

(3) Establish night schools and part-time schools whenever in the judgment of the board they may be necessary;

(4) Permit school buildings and school property to be used for public, community or recreational purposes under rules, regulations and conditions as prescribed from time to time by the board of education;

(A) No member of the board or other school official shall be held liable in damages for any injury to person or property resulting from the use of school buildings or property;

(B) The local board of education may lease buildings and property or the portions of buildings and property it determines are not being used or are not needed at present by the public school system to the owners or operators of private child care centers and kindergartens for the purpose of providing educational and child care services to the community. The leases may not be entered for a term exceeding five (5) years and must be on reasonable terms that are worked out between the school board and the owner or operator. The leasing arrangement entered into in accordance with this subdivision (b)(4)(B) shall not be intended or used to avoid any school integration requirement pursuant to the U.S. Const. amend. 14. The local board of education shall not execute any lease pursuant to this subdivision (b)(4) that would replace or supplant existing kindergarten programs or kindergarten programs maintained pursuant to the Minimum Kindergarten Program Law, codified in § 49-6-201. This subdivision (b)(4) shall also apply to municipal boards of education;

(5) Employ legal counsel to advise or represent the board;

(6) Make rules providing for the organization of school safety patrols in the public schools under its jurisdiction and for the appointment, with the permission of the parents, of pupils as members of the safety patrols;

(7) Establish minimum attendance requirements or standards as a condition for passing a course or grade; provided, that the requirements or standards are established prior to any school year in which they are to be applicable, are recorded in board minutes and publicized through a newspaper of general circulation prior to implementation and are printed and distributed to students prior to implementation; and provided, further, that the requirements or standards shall not violate § 49-6-3002(b);

(8) Provide written notice to probationary teachers of specific reasons for failure of reelection pursuant to this title; provided, that any teacher so notified shall be given, upon request, a hearing to determine the validity of the reasons given for failure of reelection; provided, that:

(A) The hearings shall occur no later than thirty (30) days after the teacher's request;

- (B) The teacher shall be allowed to appear, call witnesses and plead the teacher's cause in person or by counsel;
- (C) The board of education shall issue a written decision regarding continued employment of the teacher; and
- (D) Nothing contained in this subdivision (b)(8) shall be construed to grant tenure or the expectation of continued employment to any person;
- (9) Offer and pay a bonus or other monetary incentive to encourage the retirement of any teacher or other employee who is eligible to retire. For purposes of this subdivision (b)(9), "local board of education" means the board of education of any county, municipal or special school system;
- (10) Lease or sell buildings and property or the portions of buildings or property it determines are not being used or are not needed at present by the public school system in the manner deemed by the board to be in the best interest of the school system and the community that the system serves. In determining the best interest of the community, the board may seek and consider recommendations from the planning commission serving the community. No member of the local or county board or other school official shall be held liable in damages for any injury to person or property resulting from the use of the school buildings or property. No lease or sale shall be used to avoid any school integration requirement. A local board of education may also dispose of surplus property as provided in §§ 49-6-2006 and 49-6-2007, it being the legislative intent that a local board at its discretion may dispose of surplus property to private owners as well as civic or community groups as provided by this subdivision (b)(10);
- (11) Establish and operate before and after school care programs in connection with any schools, before and after the regular school day and while school is not in session. No Tennessee foundation program school funds or any required local matching funds shall be used in connection with the operation of these programs, but the board may charge a fee of any child attending a before and after school care program. In these programs, the board may use teachers on such extended program assignments as may be authorized by § 49-5-5209 and policies established pursuant to § 49-5-5209;
- (12) Contract for the management and operation of the alternative schools provided for in § 49-6-3402 with any other agency of local government;
- (13) Include in student handbooks, or other information disseminated to parents and guardians, information on contacting child advocacy groups and information on how to contact the state department of education for information on student rights and services; and
- (14) Cooperate with community organizations in offering extended learning opportunities.

Appendix O: Chancellor's Opinion

FILED

AUG 30 1957

CAS. BAKER, C. & M.

C. Baker

HAMILTON COUNTY, TENNESSEE

and the HAMILTON COUNTY

BOARD OF EDUCATION,

Complainants,

vs.

CITY OF CHATTANOOGA, TENNESSEE,

Defendant.

NO. 34312

IN THE CHANCERY COURT, PART I,

AT CHATTANOOGA, TENNESSEE

CHANCELLOR'S MEMORANDUM OPINION

This suit was filed under the Declaratory Judgment Law of Tennessee and, in particular, seeks a construction of Section 9 of Chapter 113 of the Public Acts of 1955, T.O.A. 6-310, the pertinent portion of which is as follows:

"REPEAL ON OTHER STATE INSTRUMENTALITIES;
BE IT FURTHER ENACTED, That upon adoption of an annexation Ordinance or upon referendum approval of an annexation resolution as hereinabove provided, an annexing municipality and any affected instrumentality of the State of Tennessee, such as, but not limited to, a utility district, sanitary district, school district, or other public service district, shall attempt to reach agreement in writing for allocation and conveyance to the annexing municipality of any or all public functions, rights, duties, property, assets and liabilities of such state instrumentality that justice and reason may require in the circumstances."

The bill charges that under this Act the City of Chattanooga passed an ordinance effective January 8, 1957, annexing that portion of Hamilton County known as Westdale which included the Westdale Elementary School of Hamilton County and on January 9, 1957, passed an ordinance annexing that portion of Hamilton County known as East Brainerd which included the Elbert Long School. It charges that Hamilton County had spent a total of \$539,117.34 in building and equipping these two schools and sought a judgment in